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SENATE

REPORT
No. 97-564

MISCELLANEOUS TARIFF, TRADE, AND CUSTOMS MATTERS

SEPTEMBER 21 (legislative day, SEPTEMBER 8), 1982.—Ordered to be printed

Mr. DOLE, from the Committee on Finance,
submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 4566]

The Committee on Finance, to which was referred the bill (H.R. 4566) to reduce certain duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

I. SUMMARY

H.R. 4566, as referred to the committee was ordered favorably reported with amendments which struck everything after the enacting clause and substituted the provisions described herein. Title I of H.R. 4566, as amended contains miscellaneous amendments to the tariff and customs laws of the United States, provisions to implement the extension of the International Coffee and Sugar Agreements and provisions to implement the Nairobi Protocol to the Florence Agreement. Title II of the bill contains provisions implementing the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. Title III of the bill contains the provisions of S. 2094, the Reciprocal Trade and Investment Act of 1982, with a minor amendment. By press releases dated October 19, 1981 and August

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31, 1982 the committee requested written comments on these bills. Hearings were held on July 12, 21, and July 22, 1982. A summary of H.R. 4566, as amended, follows:

TITLE I, PART A

(1) *Dicofol.*—Section 102 provides for a reduction of the duty on the pesticide commonly known as Dicofol effective on or after the date of enactment of the Act. The section also provides that if a request is filed with a customs officer within 90 days of enactment, prior entries which were unliquidated or with respect to which the liquidation is not final shall be reliquidated as if entry had been made under the terms of the provision.

(2) *Copper Scale.*—Section 103 provides duty-free treatment on copper scale from the date of enactment until December 31, 1985.

(3) *Potatoes.*—Section 104 amends the Tariff Schedules to ensure that potatoes imported as seed potatoes are not diverted for human consumption.

(4) *Texturing machines.*—Section 105 provides duty-free treatment on certain textile machines specially designed for stretch or heat-set texturing of continuous man-made fibers with respect to articles entered after March 1, 1982.

(5) *Small toys and novelty items.*—Section 106 temporarily provides duty-free treatment on certain small toys and novelty items provided for in parts 5D and 5E of schedule 7 of the TSUS (except balloons, marbles, dice, and die cast vehicles), valued not over 5 cents per unit; and jewelry provided for in part 6A of schedule 7 (except parts), valued not over 1.6 cents per piece from the date of enactment.

(6) *Red peppers.*—Section 107 provides temporary duty-free treatment on mixtures of mashed or macerated hot red peppers and salt through June 30, 1985. This section also provides for retroactive duty-free treatment for articles entered between the termination of the prior suspension and the date of enactment upon the filing of a proper request with Customs within 90 days of enactment of this Act.

(7) *International Sugar Agreement Act.*—Section 108 extends Public Law 96–236, an Act providing for the implementation of the International Sugar Agreement for two years from the expiration of the current authority which expires January 1, 1983.

(8) *International Coffee Agreement Act.*—Section 109 extends Public Law 96–599, an Act providing for the implementation of the International Coffee Agreement, for one year from the expiration of the current authority which expires October 1, 1982.

(9) *Casein Button Blanks.*—Section 110 provides duty-free treatment on casein button blanks entered on or after the date of enactment.

(10) *Freight containers.*—Section 111 temporarily provides duty-free treatment on certain freight containers entered between the date of enactment and December 31, 1986, when the articles will become permanently duty-free under current law.

(11) *Color couplers.*—Section 112 reinstates the temporary duty-free treatment on color couplers and coupler intermediates used in

the manufacture of photographic sensitized material between June 30, 1982 and September 30, 1985.

(12) *Carrots.*—Section 113 temporarily provides duty-free treatment on the first 20,000 tons of cull carrots entered in bulk containers of 100 pounds or more during the period August 15 to February 15 of the following year until June 30, 1985.

(13) *Hatter's fur.*—Section 114 temporarily provides duty-free treatment on hatter's fur entered between October 1, 1982 and December 31, 1985.

(14) *Watches from insular possessions.*—Section 115 amends the TSUS with respect to the dutiable status of watches and watch movements from U.S. insular possessions and provides temporary production incentives to stimulate the continued production of watches in such possessions.

(15) *Caffeine.*—Section 116 temporarily reduces the duty on caffeine provided for in TSUS item 437.02 with respect to articles entered between the date of enactment and December 31, 1983.

(16) *Sulfapyridine.*—Section 117 temporarily provides duty-free treatment in sulfapyradine entered between the date of enactment and December 31, 1985.

(17) *Sulfathiazole.*—Section 118 temporarily reduces the duty on sulfathiazole entered between the date of enactment and December 31, 1985.

(18) *Fish netting and fish nets.*—Section 119 reduces permanently the duty on fish netting and fish nets of textile materials provided for in item 355.35 of the TSUS entered after January 1, 1982.

TITLE I, PART B

(19) *Nairobi Protocol.*—Sections 131-137 implement the Nairobi Protocol to the Florence Agreement. The protocol provides for duty-free treatment for a broader range of educational, scientific, and cultural materials and articles for the handicapped.

TITLE II

(20) *Cultural Property Convention.*—Sections 201-215 implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. These provisions authorize the President to enter into agreements to restrict imports of illicitly traded artifacts when the major importing nations are implementing similar controls. The provisions also authorize the President to impose import controls unilaterally in an emergency, and they bar the importation of certain items identified as having been stolen from museums or similar institutions abroad.

TITLE III

(21) *Reciprocal Trade and Investment Act of 1982.*—Sections 301-308 of the bill contain the provisions of the Reciprocal Trade and Investment Act of 1982, previously ordered favorably reported by the Committee as S. 2094. The Committee made a minor amendment to this bill as previously reported, deleting one TSUS item

from those items listed in section 8 of S. 2094 with respect to which the President is authorized to negotiate tariff reductions.

II. GENERAL EXPLANATION

In this general explanation of the substantive provisions of H.R. 4566, the following acronyms or phrases have the indicated meaning:

(1) "TSUS" means the Tariff Schedules of the United States.

(2) "MFN rate of duty" for an item in the TSUS means the rate of duty under column numbered 1 of the TSUS for that item, which is the rate of duty applicable to imports from countries receiving most-favored-nation treatment.

(3) "Non-MFN rate of duty" for an item in the TSUS means the rate of duty under column numbered 2 of the TSUS that item, which is the rate of duty applicable to imports from countries not receiving most-favored-nation treatment.

(4) "LDDC rate of duty" for an item in the TSUS means the rate of duty under the column designated LDDC in the TSUS for that item, which is the preferential rate of duty applicable to imports from the least developed of the developing countries, i.e., those countries listed in General Headnote 3(d) of the TSUS. This rate of duty is the reduced rate of duty negotiated in the Multilateral Trade Negotiations, and in most cases will be applicable to imports from all countries receiving MFN treatment on and after January 1, 1987.

(5) "GSP" means the Generalized System of Preferences established under title V of the Trade Act of 1974, which provides duty-free treatment to specified articles imported from designated developing countries.

(6) "MTN" means the Multilateral Trade Negotiations, concluded in Geneva, Switzerland in 1979.

TITLE I, PART A. MISCELLANEOUS TARIFF AND CUSTOMS MATTERS

SECTION 102—DICOFOL

Present law.—Imports of "1,1-Bis(4-Chlorophenyl)-2,2,2-trichloroethanol (Dicofol);" a pesticide commonly known as Dicofol, classified under TSUS item 408.28 are subject to an MFN rate of 18.4 percent ad valorem and non-MFN rates of 7 cents per pound plus 64.5 percent ad valorem. The MFN rate will gradually be reduced to 12.5 percent ad valorem under scheduled reductions resulting from the MTN negotiations.

The bill.—Section 102 (originally introduced as S. 1746) amends item 408.24 by adding Dicofol to the list of chemicals included within that provision, making it dutiable at an MFN rate of 12 percent ad valorem. The bill would also provide that, on request to the proper customs officer filed within 90 days of its enactment, entries of Dicofol which occurred before enactment and which were not liquidated would be entitled to the reduced duty.

Reasons for the provision.—Prior to the conclusion of the Multilateral Trade Negotiations and their implementation in U.S. law certain imported products including benzenoid chemical products (of which the pesticide Dicofol is one) were subject to the American Selling Price (ASP) method of customs appraisement.

Under the ASP method of appraisement certain products (which, because they accomplish results substantially equal to those accomplished by the domestic products when used in substantially the same manner) would be appraised on the basis of the U.S. wholesale price of the similar domestic product, without regard to the actual cost of the imported product. If there was no similar domestic product, the import was appraised on the actual wholesale price of the imported product. The MTN Customs Valuation Agreement required the U.S. to eliminate the ASP method of appraisement. Although implementation of the Customs Valuation Agreement required elimination of the ASP system the new system was designed to establish tariff classifications and rates of duty which would have provided an import duty during a representative period substantially equivalent to the amount collected as a result of the ASP method. As a result of the new classification, Dicofol was placed in TSUS item 408.28, which was designed to include imports previously classified as "competitive". Information presented to the committee, however, indicates that Dicofol has not been produced in the United States in recent years. The column 1 duty rate in item 408.28 is 18.4 percent ad valorem. The bill would amend the TSUS by specifically including Dicofol in TSUS item 408.24. Since this provision was designed to include those imported insecticides not produced in the United States and therefore "not competitive" the column 1 duty rate in item 408.24 is 12 percent ad valorem. The Administration does not oppose this bill. The estimated annual loss of customs revenue during the years 1982–84 is as follows: $244,000, $400,000 and $434,000.

SECTION 103—COPPER SCALE

Present law.—Imported copper scale is dutiable under two separate TSUS items depending on whether it is to be initially treated at a copper plant. Under TSUS item 603.50 (initial treatment at a copper plant) the MFN rate is .68 cents per pound plus additional duties on the lead or zinc content, if any. The non-MFN rate is 4 cents per pound, plus additions. Under TSUS item 603.70 (initial treatment at other than a copper plant) the MFN rate is 6.9 percent ad valorem and the non-MFN rate is 30 percent ad valorem.

The bill.—Section 103 (originally introduced as S. 2031) amends the TSUS to provide for a suspension of the MFN rate on copper scale classified in TSUS item 603.70 until December 31, 1985. The non-MFN rate would remain unchanged.

Reasons for the provision.—Copper scale is a product created during the process of fabricating copper rods or wire and is either reused by secondary smelters or traded for the market value of its metal content. The product, when refined is used, among other things, as an antifouling ingredient in marine paint. It is the committees understanding that copper scale is not produced in sufficient quantities in this country to meet domestic demand for all its uses. The Administration does not oppose this bill. The annual estimated loss of customs revenue during the suspension would be approximately $6,400.

SECTION 104—POTATOES

Present law.—Under current law there is an annual tariff-rate quota on potatoes for human consumption of 45 million pounds. Imports under quota enter at the rate of 36.5 cents per 100 pounds. Imports over the quota enter at the rate of 60 cents per 100 pounds. There is also a quota on certified seed potatoes (which are indistinguishable from regular potatoes) of 114 million pounds. Imports under quota enter at the rate of 36.5 cents per 100 pounds. Imports over quota enter at the rate of 60 cents per 100 pounds.

The bill.—Section 104 (originally introduced as S. 2560) amends current law by adding a so-called "actual use" provision to the superior heading to the tariff items for seed potatoes to permit the Customs Service to verify that seed potato imports are used as such.

Reasons for the bill.—It is believed that a significant number of the potatoes are currently entered as certified seed potatoes to avoid the quota on regular potatoes but are marketed as tablestock potatoes and are not used for seed. The intent of Section 104 is to limit imports under the tariff quota for certified seed potatoes to potatoes actually used for seed and to assure that entries of certified seed potatoes are not diverted for use as table stock. The Administration does not oppose this provision. The estimated annual revenue gain would be approximately $320,000.

SECTION 105—TEXTURING MACHINES

Present law.—Texturing machines classified under TSUS item 670.06 are dutiable at an MFN rate of 5.1 percent ad valorem. The non-MFN rate is 40 percent ad valorem.

The bill.—The bill would create a new TSUS item 670.03 for texturing machines specially designed for stretch or heat-set texturing of continuous man-made fibers. MFN imports would be duty-free. Non-MFN imports would continue to be dutiable at 40 percent ad valorem.

Reasons for the bill.—In recent years a new technique known as friction-twisting has replaced an earlier technique called pin-twisting in the process of making yarns bulkier. Machines using this new technique are now almost completely replacing the older machines. Machines incorporating this new technique, however, are no longer produced in this country. Since there is no domestic industry producing a competitive product the committee believes it is desirable to relieve the domestic textile industry of the added burden of paying duties on the subject machines.

The Administration does not oppose this bill. The estimated annual loss of customs revenue would be approximately $1 million.

SECTION 106—CERTAIN SMALL TOYS AND NOVELTY ITEMS

Present law.—Under current law imported toys classified in parts 5D and 5E of schedule 7 of the TSUS (except balloons, marbles, dice, and die cast vehicles) valued at not over 5 cents per unit are subject to duties ranging from 7.7 percent ad valorem to 22 percent ad valorem. Jewelry provided for in part 6A of schedule 7 (except parts) valued not over 1.6 cents per piece is dutiable at rates ranging from 14 percent ad valorem to 21.3 percent ad valorem.

The bill.—Section 106 (originally introduced as S. 2692) amends current law by temporarily suspending until December 31, 1986, the MFN rate on these articles. The non-MFN rate would remain unchanged.

Reasons for the bill.—This provision would affect low price, low quality items sold primarily in bulk vending machines. Generally speaking, items in the same price and quality range are not domestically produced. In addition, the committee received no comments in opposition to this bill.

The Administration does not object to this provision. The estimated annual loss of customs revenue would be $1-$2 million.

SECTION 107—HOT RED PEPPERS

Present law.—Until June 30, 1981, duties on imports of mixtures of mashed or macerated hot red pepper and salt were suspended. Currently the applicable MFN rate of 17.5 percent ad valorem is in effect.

The bill.—The bill (originally introduced as S. 2705) would suspend until June 30, 1985 the MFN rate on this article. The non-MFN rate would remain unchanged. The bill would also permit, upon the filing of a proper request with customs within 90 days of the enactment, the reliquidation of articles entered after June 30, 1981, and before the date of enactment.

Reasons for the bill.—The product in question is made by crushing any of several varieties of hot red peppers and preserving the resulting pulp in salt. When vinegar is added thereafter, the end product is hot red pepper sauce. There is only one known importer of this product. This company has contracts with growers in six Latin American countries to which it provides seeds and technical assistance. Under these circumstances and in the absence of any comments in opposition to the bill, the committee believes an extension of the suspension is warranted.

The Administration does not oppose this provision. The estimated annual loss of customs revenue would be $20,000.

SECTION 108—INTERNATIONAL SUGAR AGREEMENT ACT EXTENSION

Present law.—Public law 96-236, (the Sugar Agreement Act) providing for the implementation of the International Sugar Agreement, 1977, expires January 1, 1983.

The bill.—The bill (originally introduced as S. 2539) would extend the Sugar Agreement implementing legislation until January 1, 1985.

Reasons for the bill.—The Sugar Agreement Act authorizes the President to implement obligations under the 1977 International Sugar Agreement (the ISA). Section 2 of the Sugar Act authorizes the President to regulate the entry of sugar into the United States by imposing limitations on the entry of sugar from countries which are not members of the ISA or through the prohibition of entry of sugar from any member country which is not accompanied by proper export documents. Section 2 also authorizes the President to require recordkeeping regarding sugar imports by sugar importers.

Failure to keep appropriate records is punishable by a $1,000 fine. In addition, the President is directed to protect the interests of U.S. consumers against market price manipulation by ISA members, and if efforts to do so fail, the authority to regulate imports is suspended until the President determines that the market manipulation activities have ceased.

The current ISA was signed in 1977 and represents the latest in a series of agreements which have attempted to reduce world sugar price fluctuations. The United States became a signatory to the ISA in 1977 and implemented it in mid-1980, as described above. The ISA was due to expire on December 31, 1982. With U.S. approval, however, it has been extended for 2 years, thus requiring an extension of the implementing legislation if U.S. participation in the ISA is to continue.

By establishing country-by-country export quotas and a system of buffer stocks, the ISA attempts to hold prices within a range currently set at 13 to 23 cents per pound. When the world price approaches the lower end of the objective price range, ISA exporting countries are required to reduce the amount of sugar they export and add to their buffer stocks. When prices increase, member exporting countries are allowed to exceed their export quotas, and, above 21 cents per pound, they can release sugar from their buffer stocks.

The export quotas, based upon Basic Export Tonnages (BET's), are based roughly on each exporting member country's productive capacity, export performance history, and dependency of total export earnings on sugar. The size of a country's BET's also determines the size of its buffer stock. The whole program involving BET's and buffer stocks is administered by the International Sugar Council, the highest authority of the ISA. The Council also administers a stock-financing fund to provide members interest-free loans to finance stocks held under the provision. The fund's resources come from a tax collected on all free-market raw sugar trade of ISA members.

Sugar importing countries that join the ISA, such as the United States, agree to limit their sugar imports from nonmember countries. These limitations, however, do not apply when the world price rises above 23 cents per pound.

The committee received no testimony or comments in opposition to the extension, which the administration supports. The committee believes that the President should be authorized to extend implementation of the International Sugar Agreement.

SECTION 109—INTERNATIONAL COFFEE ACT EXTENSION

Present law.—Public Law 96-599 (the Coffee Agreement Act) implementing the International Coffee Agreement, 1976 expires on October 1, 1982.

The bill.—The bill (originally introduced as S. 2540) would amend current law by changing the expiration date to October 1, 1983.

Reasons for the bill.—The Coffee Agreement Act authorizes the President to implement obligations under the 1976 International Coffee Agreement (ICA). Section 2 of the Coffee Agreement Act authorizes the President to regulate the entry of imported coffee into the United States whenever quotas are in effect under the ICA. He can do so by limiting the entry of coffee from countries which are not signatories to the ICA and by prohibiting the entry from countries which are ICA signatories of coffee that is not accompanied by proper export documents. Section 2 authorizes the President also to require importers to keep adequate records and statistics concerning the importation and distribution of coffee. In addition, the Coffee Agreement Act directs the President to protect the interests of U.S. consumers against market price manipulation by ICA members and if efforts to do so fail, the authority to regulate imports is suspended until the President determines the market manipulation activities have ceased.

The 1976 agreement as well as its predecessors, the 1962 and 1968 agreements, is essentially an agreement among major coffee exporting and importing countries to regulate the amount of coffee entering international trade. ICA members account for about 99 percent of green coffee exports and about 92 percent of green coffee imports. Any member can withdraw from the agreement at any time by notifying the U.N. Secretary General.

The 1976 agreement, administered by the International Coffee Council (the ICC), attempts to establish a basic demand-supply balance through a system of export quotas and production goals. The agreement provides for quotas to come into effect when prices fall to between $1.15 and $1.50 per pound unless the ICC provides otherwise. It also provides for quotas to be automatically suspended if prices for 20 consecutive days are 15 percent or more above the average composite indicator price recorded during the preceding calendar year. The 1976 agreement has a voluntary—as opposed to a mandatory—production policy and a provision for a voluntary diversification program.

The 1976 Agreement was to expire on September 30, 1982 but, with U.S. approval, has been extended for 1 year. An extension of the implementing legislation is required if U.S. participation in the ICA is to continue. The committee has received no comments opposing extention of the legislation which the administration supports.

Because all column 1 imports of the coffee products included within the scope of the bill are duty-free, the International Trade Commission estimates the enactment of this bill would have no revenue impact.

It is the position of the Committee that the President should be authorized to continue to implement the International Coffee Agreement.

SECTION 110—CASEIN BUTTON BLANKS

Present law.—Casein button blanks classified under item 745.40 of the TSUS are dutiable at an MFN rate of 22.1 percent ad valorem. The non-MFN rate is 45 percent ad valorem.

The bill.—The bill (originally introduced as S. 1392) would provide permanent duty-free treatment for MFN imports of this article entered on or after the date of enactment. The non-MFN rate would remain unchanged.

Reasons for the bill.—Casein button blanks, which are not domestically produced, are imported, drilled and polished to make buttons. The MFN rate on the unfinished product, the blanks, is 22.1 percent ad valorem while the MFN rate on the finished product, casein buttons is 6.9 percent ad valorem. As a result the three domestic manufacturers of casein buttons, each of which is a relatively small concern, allege that they are at a competitive disadvantage with importers of finished buttons.

The Administration does not oppose this bill. The estimated annual loss of revenue would be $8,400.

SECTION 111—FREIGHT CONTAINERS

Present law.—Under current law, a freight container which is used for merchandise carried in foreign trade may be designated as an "instrument of international traffic", and thus be brought in without the payment of duty if the container moves by a reasonably direct route between its point of unloading and the point of its reloading for a foreign destination. However, in order to receive such a designation, a bond must be on file with the Customs Service. If the container is (1) of foreign origin or (2) of U.S. origin and increased in value abroad and if it is withdrawn from international traffic (i.e., "retired" or "domesticated"), it becomes subject to entry and the payment of applicable duties under TSUS item 640.30, currently 3.1% ad valorem for column 1 and 25 percent for column 2. These articles will be entitled to duty-free entry on January 1, 1987 under concessions granted during the MTN. Freight containers are eligible for duty-free entry under GSP.

The bill.—The bill (originally introduced as S. 1717) would provide immediate duty-free MFN treatment for these freight containers.

Reasons for the bill.—The committee received a number of comments in support of the bill from freight companies, steamship operators, and container leasing companies. These companies stated that the bill would relieve them of the adminstrative cost of keeping track of the containers to make certain that they are repositioned by a reasonably direct route as well as the cost of posting bonds for their entry.

The committee received one comment in opposition to the bill from the Truck Trailer Manufacturers Association but information received from the U.S. International Trade Commission indicates that the domestically made containers are generally of a different type than the imported containers.

The Administration does not oppose the bill. It is estimated, that the bill would result in minimal loss of Customs revenue.

SECTION 112—COLOR COUPLERS

Present law.—Until June 30, 1982, the MFN duty on imported color couplers and coupler intermediates used in the manufacture of photographic sensitized material was suspended.

The bill.—The bill (originally introduced as S. 2889) would continue the pre-existing suspension until September 30, 1985.

Reasons for the bill.—This product is manufactured domestically by only one company for its own use. That company supports the suspension of duty on the products in question and no other comments in objection have been received by the committee. Suspension of the duty will continue to reduce the costs of other domestic consumers of this product.

The Administration does not oppose this provision. The estimated annual loss of customs revenue is $100,000.

SECTION 113—CARROTS

Present law.—Imported carrots classified under item 135.42 of the TSUS are dutiable at an MFN rate of .5 cents per pound and a non-MFN rate of 4 cents per pound.

The bill. The bill (originally introduced as S. 1588) was amended by the committee. As amended, the bill would temporarily suspend until June 30, 1985 the MFN duty on culled carrots imported in bulk containers of 100 pounds or more, during the period August 15 to February 15 of the following year, under a quota of 20,000 tons. The non-MFN rate would remain the same.

Reasons for the bill.—The proposed amendment to the TSUS was prompted by the enactment of section 508 of the Trade Agreements Act of 1979. This section altered the U.S. tariff structure applicable to imports of all fresh carrots by assessing a *specific* (per pound) rate of duty rather than the 6 percent *ad valorem* (percent) rate of duty which had been in effect.

The United States Trade Representative stated that the purpose of section 508 was to "harmonize" U.S. and Canadian duties on carrots. Canada and Mexico are the chief sources of imported carrots. It should be noted that the increase in U.S. duty on carrots is believed to be the only duty increase in the Trade Agreements Act of 1979 for which advice was not sought from the International Trade Commission, pursuant to the advisory process required by the Trade Act of 1974. It is also noted that, contrary to the legislative history upon which section 508 is predicated, Canada did not "reduce its rates" on carrots as a result of these negotiations or otherwise.

Because dirt or other foreign matter must be included in the calculation of a specific rate of duty, importation of fresh carrots in bulk (i.e., harvested directly into pallet boxes or field trucks without further processing) is less advantageous for the U.S. importer than under an ad valorem rate since the impact of dirt or other foreign matter in the assessment of a specific duty can be significant. On the other hand, an ad valorem rate tends to be more restrictive of imports of fresh carrots when greater value is added (e.g., washing, grading, packaging for retail sale, etc.) in the country of exportation (e.g., Canada and Mexico); and a specific rate of duty is less restrictive for Canadian carrot exports with greater value-added prices. As a result, carrot processors have been adversely affected.

The Administration does not oppose enactment of this bill. The annual potential loss of customs revenue from this bill would be approximately $190,000.

SECTION 114—HATTER'S FUR

Present law.—Imported fur for hatter's use is dutiable at an MFN rate of 15 percent ad valorem. The non-MFN rate is 35 percent ad valorem.

The bill.—The bill (originally introduced as S. 2853) would temporarily suspend until December 31, 1985 the MFN rate. The non-MFN rate would remain the same.

Reasons for the bill.—Fur imported under TSUS item 186.20 to be used in the production of hats is dutiable at 15 percent ad valorem. Since over 70 percent of imports of comparable hats enter duty-free from GSP countries, domestic hat manufacturers are placed at a competitive disadvantage. Also there is no rabbit variety in the U.S. (the primary type of fur used), the fur of which is suitable for hat use.

The Administration does not oppose this bill. The estimated loss of duty is believed to be small.

SECTION 115—WATCHES FROM INSULAR POSSESSIONS

Present law.—General Headnote 3(a)(i) of the TSUS provides that watches and watch movements imported from insular possessions may enter the United States free of duty if they do not contain foreign materials to the value of more than 70 percent of their total value. Current law also provides a quantitative restriction on such imports equal to one-ninth of apparent U.S. consumption.

The bill.—The bill (originally introduced as S. 2858) would change existing law as follows:

a. Eliminating the existing limit of 70 percent foreign content;

b. Establishing the annual limit on duty-free entry at 7 million units which can be adjusted downward by no more than 10 percent in any one year or upward by no more than 20 percent in any one year;

c. Continuing to provide country allocation authority to the Secretaries of Commerce and Interior; and

d. Providing a duty rebate for the industry on a by-company basis which would reflect the amount of local labor content in the watches.

Section 115 would amend the TSUS by striking from headnote 3(a)(i) of the General Headnotes and Rules of Interpretation the term "(or more than 70 percent of the total value with respect to watches and watch movements)". The effect is to remove the 70 percent limitation on foreign content.

In addition, section 115 references schedule 7, part 2E, makes wording changes necessary to accommodate other herein proposed changes; defines insular possessions as the Virgin Islands, Guam, and American Samoa; and strikes out existing paragraphs (b) through (d) and replaces them with new paragraphs (b) through (h). These new paragraphs accomplish the following:

Paragraph (b): contains the expression "without regard to the value of foreign materials they contain" which clarifies the intent of allowing 100 percent foreign content.

Paragraph (c): establishes a new quota system for watches from the insular possessions. The 1983 limit would be 7,000,000 units and could be adjusted in 1984 and following years. The amount could not be adjusted downward by more than 10 percent or upward by more than 20 percent in any one year and could in no event exceed 10,000,000 units or one-ninth of domestic consumption.

Paragraph (d): authorizes the International Trade Commission to determine the apparent U.S. consumption of watches and watch movements in the event that the consumption-related ceiling is reached. Consumption is intended to include solid state time pieces for purposes of this section.

Paragraph (e): establishes territorial distribution for 1983 and limits its redistribution. In 1983, the duty-free entry from the Virgin Islands would be limited to 5,200,000 units, Guam to 1,200,000 units, and American Samoa to 600,000 units. For 1984 and 1985, no territorial limit could be reduced by more than 200,000 units. In 1986 and after, the territory's share could be reduced by no more than 500,000 units with no territory falling below a limit of 500,000.

Paragraph (f): continues to empower the Secretaries of Commerce and Interior to divide the above discussed allocations fairly and equitably among the producers located in the insular possessions and allows the Secretaries to establish allocation criteria to maximize economic benefit to the insular possessions.

Paragraph (g): establishes production incentive certificates for issuance to producers in the insular possessions. The Secretaries would verify the wages paid by each producer to permanent residents of the insular possessions in the preceding calendar year and would, by March 1, issue a certificate to each producer reflecting the amount of wages paid. The value of each producer's certificate would be equal to 90 percent of the producer's creditable wages for the first 300,000 units produced plus a declining percentage (to be established by the Secretaries) on additional units up to a maximum of 750,000 units. These certificates would entitle the holder to a refund of duties paid (on other watch imports). The committee deleted the term "and bracelets" from the description of articles for which the production incentive certificate refund is available so as to avoid any implication that a bracelet is part of a watch under the TSUS even if the bracelet is affixed to the watch. These certificates would be negotiable and the maximum total value of these certificates cannot exceed $5,000,000 in 1983. An amount equal to the greater of a producer's creditable wages paid in calendar year 1982 or an amount equal to 60 percent of a producer's 1981 creditable wages would be considered the creditable wages for 1982. In addition, the U.S. Customs Service would be permitted to retain up to 5 percent of the refunds for administrative costs.

Section 2(g)(v) provides holders of a certificate with a period up to one year from the date of issuance of a certificate in which to transfer the certificate. These certificates can be submitted to the U.S. Customs Service at any time prior to their expiration date, and may be applied against duties on any imports of watches and watch movements the entry of which were made at any time between the date the certificate was submitted to the Customs Service and going back to within two years prior to the date of the issuance of the certificate.

Paragraph (h): authorizes the Secretaries to issue regulations, not inconsistent with these provisions, to carry out their duties under this headnote. This would include the right to cancel or restrict the license or certificate of any manufacturer found in violation of regulations. These regulations would include minimum assembly requirements which would align as closely as possible with existing assembly requirements.

Reasons for the bill.—Since 1959, the watch and watch movement industry has been a significant factor in the economy and employment opportunities in the United States' insular possessions. This has been, in part, due to tariff incentives provided under the TSUS which currently afford duty-free entry to watches and watch movements which do not have more than 70 percent foreign content.

At its peak, the industry provided more than 1,300 jobs. However, since 1980, over half the industry has closed down and employment is now under 100 people. This is largely because of a market shift away from mechanical watches and toward quartz digital watches. Producers in the insular possessions have not refitted to accommodate this market shift.

Imports levels are low as compared to quotas against which they are monitored. The Virgin Islands, for example, shipped 2.6 million units in 1981 against a quota of just over 7 million units.

The intent of this provision is to spur production in the insular possessions and to encourage those producers who are there to stay and those producers who have left to potentially return.

The Administration supports this provision.

SECTION 116—CAFFEINE

Present law.—Imports of caffeine classified in TSUS item 437.02 are dutiable at an MFN rate of 8.5 percent ad valorem. The non-MFN rate is 59 percent ad valorem.

The bill.—The bill (originally introduced as S. 2895) would temporarily reduce the MFN rate to 6 percent ad valorem until December 31, 1983.

Reasons for the bill.—During the Tokyo round of Multilateral Trade Negotiations, the United States negotiated tariff reductions on some items, including caffeine, based on a staged reduction of the ad valorem equivalent to the specific and compound rates then in effect. Effective July 1, 1980, the rates of duty for caffeine were changed from specific rates of 25 cents per pound in column 1 and $1.25 per pound in column 2 to ad valorem rates of duty of 9.5 percent in column 1 and 59 percent in column 2. The 9.5 percent rate was the first staged reduction from the 10.4 percent ad valorem equivalent rate converted in accordance with section 601(4) of the Trade Act of 1974. The converted rate of 10.4 percent ad valorem was based upon an ad valorem equivalent of 25 cents per pound obtained by dividing the total calculated duty for imports of that item in *1976* by the corresponding total customs-appraised value. In general, using a base period later than 1976 would have resulted in a lower ad valorem rate. With prices increasing rapidly each year however, using an earlier base period resulted in higher converted rates.

The Administration does not oppose this provision.

SECTION 117—SULFAPYRIDINE

Present law.—Imports of sulfapyridine classified in TSUS item 411.28 are dutiable at an MFN rate of 22.5% ad valorem and a non-MFN rate of 7 cents per pound plus 128.5 percent ad valorem.

The bill.—The bill (originally introduced as S. 2985) would temporarily suspend the MFN and non-MFN rates until December 31, 1985.

Reasons for the bill.—Sulfapyridine is a raw material used in the production of antiinfectants and growth stimulants. Eliminating the duty on the raw material will help lower costs of the end product to users who are primarily engaged in the production of pork.

The Administration does not oppose this bill.

SECTION 118—SULFATHIAZOLE

Present law.—Imports of sulfathiazole classified in TSUS item 411.80 are dutiable at an MFN rate of 29.4 percent ad valorem and a non-MFN rate of 7 cents per pound plus 133 percent ad valorem.

The bill.—The bill (originally introduced as S. 2884) would temporarily reduce the MFN duty to 14.6 percent ad valorem and thereafter stage reductions to 10.6 percent ad valorem, the final rate to be in effect until December 31, 1985. The non-MFN rates would reduced to 7 cents per percent plus 80 percent ad valorem.

Reasons for the bill.—Sulfathiazole is also in the family of drugs used as antiinfectants and growth stimulants, primarily by pork producers. Reducing the duty on these articles will help reduce those producer's costs.

The Administration does not oppose this bill.

SECTION 119—FISH NETTING AND FISH NETS

Present law.—Under TSUS item number 355.45 imported fish netting and fish nets of man-made fibers and salmon gill netting of nylon are dutiable at an MFN rate of 21 cents per pound plus 30.6 percent ad valorem (the ad valorem equivalent of about 40 percent). The non-MFN rate is 82 percent ad valorem.

The bill.—The bill (originally introduced as S. 1565) would reduce the MFN duty rate to 17 percent ad valorem retroactively to January 1, 1982. The rate would be equivalent to the final staged reduction pursuant to the MTN negotiation and would otherwise become effective on January 1, 1989. The non-MFN rate would remain unchanged.

Reasons for the bill.—The committee received testimony and statements from several associations representing fishermen and the commercial fishing industry in support of the bill. These groups allege that enactment of the bill would help reduce operating costs.

The committee also received comments from domestic net manufacturers and nylon producers opposing the bill, alleging that the proposed reductions at this time would be harmful to them. The administration also opposes this bill.

The legislation would result in a loss of revenue of over $1 million annually through 1984. The loss would thereafter gradually be reduced to approximately $200,000 in 1988 and $0 thereafter since the rate at that point would be the same as the MTN rate.

TITLE I PART B. IMPLEMENTING LEGISLATION FOR THE NAIROBI PROTOCOL TO THE FLORENCE AGREEMENT

Present law.—The Agreement on the Importation of Educational, Scientific and Cultural Materials (17 UST 1835; TIAS 6129; 131 UNTS 25), known as the Florence Agreement, is an international agreement providing for duty-free trade among its 90 adherents in specified categories of articles. These catgories are: (1) books, publications, and documents; (2) works of art and collector's pieces; (3) visual and auditory materials; (4) scientific instruments and apparatus; and (5) articles for the blind. Some limitations are applicable. For example, some of the covered materials must first be approved by the importing country's authorities, or must be imported for the benefit of specific institutions.

The United Nations Educational, Scientific, and Cultural Organization (UNESCO) opened the Florence Agreement for signature in 1950. Following passage of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. No. 89-651), it entered into force for the United States on November 2, 1966. Pub. L. No. 89-651 implemented the various changes in the Tariff Schedules of the United States (TSUS) required by the Agreement.

The bill.—The bill amends the TSUS to provide duty-free treatment for additional categories of scientific, cultural, and educational materials. These categories are: (1) items 270.90, 273.52, and 274.55, generally relating respectively to visual and auditory materials, architectural and engineering drawings, and materials used in producing books; (2) items 274.67, 724.07, 724.22, and 870.35, generally relating respectively to photographic and motion picture films, sound recordings, and patterns, models, or similar articles; (3) item 851.67, relating to tools for scientific apparatus; and (4) items 870.50, 870.55, and 870.66, relating to articles for the handicapped.

Under the bill, duty-free treatment for articles for the handicapped must be proclaimed within 30 days of enactment by the President for a 30-month period. The President may proclaim the other tariff changes for the same limited period if he deems such changes to be in the national interest. The tariff reductions will become permanent only if the United States ratifies the Nairobi Protocol. If this does not occur prior to the expiration of the 30-month provisional period, then the duty-free treatment will expire.

Finally, the bill provides for a limited safeguards provision allowing the President, on a most-favored-nation basis, to place conditions on, or to narrow to the strict obligations of the Protocal, the duty free treatment for articles for handicapped individuals (other than the blind) and tools for scientific instruments or apparatus. The import of which he determines has a significant adverse impact on a domestic industry producing a like or competitive article.

Explanation of the bill.—On March 1, 1977, a protocol to the Florence Agreement opened for signature at the United Nations. Known as the Nairobi Protocol, this subsidiary agreement broadens the scope of the Florence Agreement by removing some of its restrictions on articles otherwise entitled to duty-free status, and by expanding the Agreement to embrace technologically new articles and previously uncovered works of art, films, etc. One major new category of articles is included: "All materials specifically designed for the education, employment, and social advancement of physically or mentally handicapped persons. . . ." The Protocol thus is intended to afford duty-free treatment not only for articles for the blind, but all other handicapped persons without regard to the source of their affliction.

The Committee on Foreign Relations on May 21, 1982, recommended that the Senate give its advice and consent to the Protocol at an early opportunity. (Exec. Rep. No. 97-53, 97th Cong., 2d Sess. (1982)). In its report, that committee noted that the Department of State this year listed the Protocol as one of the few international agreements for which there is an urgent need. In anticipation of the Senate giving its advice and consent to the Protocol, the committee approved in this bill the necessary implementing legislation. Because the bill provides the President with the authority to implement the duty changes on a provisional basis without regard to whether the United States has ratified the Protocol, the bill may be enacted by the Congress prior to the Senate giving its advice and consent to ratification.

In approving the Educational, Scientific, and Cultural Materials Importation Act of 1966, the Committee noted that—

> The aim of this legislation is the furtherance of the educational, scientific, and cultural purposes contemplated in the Florence Agreement, as distinguished from the economic purposes for which the Congress has authorized the President to negotiate trade agreements. Enactment of [Pub. L. No. 89-651] would in no way be intended to replace, supplant, or enlarge upon the reciprocal trade agreements program. The objective and goal of this legislation is, as stated above, furtherance of arts and sciences. . . . These two programs are distinct both in purpose and in operation.

S. Rep. No. 1678, 89th Cong. 2d Sess. 4 (1966). In recommending approval of this bill, the committee reaffirms these distinctions. While the International Trade Commission estimates that the United States will enjoy a surplus in the trade of the articles encompassed by the Protocol, this bill will serve principally to promote freer exchange of ideas and cultural articles. The committee hopes this exchange will foster greater international understanding and peace, while benefitting in particular our handicapped citizens. In accomplishing these purposes, neither the bill nor the underlying agreement will serve as a precedent for conducting tariff negotiations outside of the principles of the reciprocal trade agreements program.

In considering the bill, the committee took into account the concerns expressed by some that other major contracting parties to the Protocol would not implement its provisions on substantially the same basis as the United States. This concern is based on the occasional difficulties faced by some in the scientific instruments industry with obtaining approval to export their equipment duty-free to consignees in the European Economic Community (EEC) in circumstances that would cause no difficulties if the trade were reversed. In response to questions from the committee, the Administration acknowledged these occasional difficulties, but stated that U.S. exporters are afforded reciprocal treatment in most cases. The Administration therefore does not believe that the legislation should be made explicitly contingent upon precisely reciprocal implementation of the Protocol by other countries or the EEC. Further, the Administration and consumer beneficiaries of the Protocol—in particular, the handicapped—believe that immediate implementation of the Protocol by the United States will promote wider acceptance of it abroad while benefiting deserving groups in this country.

The committee believes the bill satisfies both the concerns of U.S. exporters and beneficiaries of duty-free imports. The Protocol will not become effective as to the United States until the instrument of U.S. ratification is deposited with the United Nations. This is so even though our domestic ratification procedures are completed. In this case, the President will withhold deposit of the ratification instrument until he determines that adequate reciprocal duty-free treatment will be provided by other countries. Section 137(a) of the bill thus provides that duty-free treatment will not become permanent until the date the President proclaims as the date that the Protocol is ratified.

Section 137(b)(1), however, requires the President to proclaim duty-free treatment for articles for the blind and handicapped for the 2½ years following the thirtieth day after the date of enactment. Section 137(b)(2) further provides authority for the President to proclaim such treatment for the same period for the other articles the bill covers if he finds it to be in the national interest. Any such proclamations will expire at the end of that period. The Administration believes this time should be sufficient to insure that adequate reciprocity is achieved among signatories to the Protocol. If not, the provisional implementation will lapse.

The committee expects that, in determining when to deposit the instrument of ratification, the President will take into account the level of obligations assumed by our trading partners under the Protocol, their method of implementation of those obligations, and the benefits of U.S. ratification for U.S. consumers and exporters. In relation to the EEC specifically, the committee expects the President to determine whether there are open and accessible procedures at least roughly comparable to those of the United States; adoption of the more liberal Annex C to the Protocol, which does not restrict coverage of visual or auditory materials to imports only by certain institutions; strengthened recognition of the EEC Commission's competence in all Florence Agreement matters, and a clear improvement of its ability to adopt and to enforce uniform standards for imports under the Agreement and the Protocol; and as complete and detailed an understanding as can be reached on the specific tariff coverage of the various annexes to the Protocol.

The committee is satisfied that the multiple interests of the United States in the Protocol are best served by this two-stage implementing procedure, and that the President will proceed carefully in reaching his determination prior to final ratification.

SECTION-BY-SECTION ANALYSIS

Section 131.—This section merely sets forth the title and purpose of the bill. The Florence Agreement (TIAS 6129, 17 UST 1835), referred to in subsection (b), was implemented domestically by the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651).

Section 132.—This section sets forth the items in the Tariff Schedules relating to books, publications, and documents for which the President may proclaim duty-free treatment pursuant to section 137. Section 132 would create a new TSUS item 270.90 that would encompass catalogs of visual and auditory materials of an educational, scientific, or cultural character; a new item 273.52 relating to architectural engineering, and similar drawings; and a new item 274.55 relating to illustrations and proofs needed for producing books. Existing MFN rates of duty applicable to these articles range from 0 to 3.7 percent ad valorem.

Section 133.—Section 133 would extend duty-free treatment to various visual and auditory materials, including films, microfiche, and sound recordings. It further would extend such treatment to other visual and auditory materials, and models and charts used for educational purposes or of an educational, scientific, or cultural character. New TSUS items 274.67, 724.07, 724.22, and 870.35 would be created to cover these articles. Existing MFN rates of duty applicable to them range from 9 to 5.3 percent ad valorem.

Section 134.—This section would provide duty-free treatment for tools used in connection with certain articles already accorded such treatment. The latter are instruments and apparatus imported for non-profit, educational, or scientific institutions for which there are no domestically-manufactured equivalents. Because the specific tools cannot be identified, existing rates cannot be pinpointed. Trade in these items is thought to be negligible, however.

Section 135.—This section would provide duty-free treatment for articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons. Many articles for the blind, and some for the handicapped, already are entitled to duty-free entry under TSUS items 825.00, 826.10, and 826.20. This section would expand coverage to include additional items for the blind and to encompass most articles specifically designed or adapted for use by the handicapped.

By providing for duty-free treatment of articles specially adapted for the blind or other physically or mentally handicapped persons, the committee does not intend that an insignificant adaptation would result in duty-free treatment for an entire relatively expensive article. Otherwise, the special tariff category will create incentives for commercially motivated tariff-avoidance schemes and pre-import and post-entry manipulation. Rather, the committee intends that, in order for an entire modified article to be accorded duty-free treatment, the modification or adaptation must be significant, so as clearly to render the article for use by handicapped persons.

The committee expects the Secretary of the Treasury, in consultation with the Secretary of Commerce, to promulgate regulations outlining criteria for the determination of whether a modification is significant. Such criteria should include the relative cost and permanence of the adaptation and the degree to which the imported article with the adaptation is dedicated to use for the handicapped. For example, an automobile fitted with special hydraulic seats and modified to be operated primarily with hand controls would not be used under normal circumstances by the non-handicapped, and represents a considerable expense to the user. On the other hand, special attachments to permit a handicapped individual to operate the foot brake or gas peddle of an otherwise conventional automobile are inexpensive modifications relative to the cost of the car, and can be readily removed subsequent to importation. This type is adapation is insufficiently significant to alter the basic character of the conventional car, and thus render it eligible for duty-free entry. (The modification, however, might so qualify if entered separately.)

The existing MFN rates of duty applicable to these articles range from 0 to 8.4 percent ad valorem.

Section 136.—This section provides a special safeguard relief mechanism for domestic industries that may suffer significant adverse impacts from imported articles for the handicapped and tools for scientific instruments rendered duty-free by the Act. It authorizes the President to place conditions upon, or to narrow to the strict obligations of the Protocol, the scope of the duty-free treatment accorded by the bill to articles in these two categories. This special treatment is warranted because the duty-free treatment authorized by this bill is unqualified, as it is in the protocol, which limits its obligations to imports of these articles by certain institutions. The committee concurred in the Administration's judgment, strongly supported by interested private sector groups, that the institutional limitation should not be applied as a matter of policy and administrative convenience. This special safeguard provision should ameliorate any unexpected problems that result from this more liberalized treatment.

An affirmative determination by the President under this section will result in a return of the duty rate applicable to the affected item to the normal rate. Subsection (b) authorizes the President to restore full duty-free treatment if the injury is eliminated. Subsection (c) requires the President to receive the views of the public and Government agencies before taking action under either subsections (a) or (b).

Normal safeguard relief, as provided in section 201 of the Trade Act of 1974 (19 U.S.C. 2251), will remain available for all articles covered by this Act.

Section 137.—Section 137(a) provides the effective date for permanent duty-free treatment accorded the articles described in sections 132–135. After receiving the advice and consent of the Senate, the President can bring the treaty into force for the United States by depositing the instrument of ratification pursuant to the terms of the Protocol. In this case, the President will withhold deposit of the instrument until he is satisfied that other major signatories are implementing the Protocol on a reciprocal basis. After deposit, the President is authorized by this section to proclaim the designated tariff adjustments on a permanent basis.

Section 137(b)(1) requires the President to proclaim, within 30 days of enactment, the duty-free treatment of articles for the blind and handicapped provided in section 135. This treatment would expire after two and one-half years, except that it may be proclaimed permanently during that period pursuant to section 137(a) and 137(b)(3). Section 137(b)(2) allows, but does not require, similar provisional proclamations for the other covered articles if the President deems it to be in the national interest. Temporary proclamations made pursuant to either subsection for articles included in sections 134 and 135 may be modified under the provisions of section 136.

Section 138.—This section is a technical record-keeping requirement intended to ensure that the United States will obtain adequate data regarding trade flows affected by the tariff modifications implemented by section 135 of this bill.

TITLE II. IMPLEMENTING LEGISLATION FOR THE CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT, AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

Purpose.—This bill implements in domestic law the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). The Cultural Property Convention is an international agreement adopted by the United Nations Educational, Scientific, and Cultural Organization on November 14, 1970. It establishes principles for the control of trade in archaeological and ethnological materials as well as certain other cultural material. Although the Senate unanimously gave its advice and consent to ratification in 1972, the Convention is not self-executing and it has not been ratified for lack of the domestic legal means necessary to carry out its obligations. The purpose of this bill is to provide that authority, thereby promoting U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that not only are of importance to the nations whence they originate, but also to greater international understanding of our common heritage.

The bill.—S. 1723, as amended by the committee and included in H.R. 4566, implements the essential obligations of the Cultural Property Convention. These obligations generally are: (1) to prohibit the import of cultural material identified as stolen from an institution in another State Party (i.e., a party to the Convention), and to assist in its recovery if it is imported; and (2) to apply specific import or other controls (upon the request of a State Party) to archaeological or ethnological materials specifically identified as comprising a part of a state's cultural patrimony that is in danger of being pillaged. Except in certain emergency situations, the latter obligation normally will be met through *ad hoc* international arrangements. In form and substance, the bill substantially emulates H.R. 5643, implementing legislation passed by the House of Representatives in the 95th Congress. (See H. Rep. No. 95-615, 95th Cong., 1st Sess. (1977)).

Following the short title provided in section 201, section 202 of the bill sets forth definitions for the important terms of art in the legislation.

Sections 203-205 and 207 implement article 9 of the Convention. These sections authorize the President, subject to certain conditions and limitations, to enter into bilateral or multilateral agreements or to invoke emergency import regulations to control the importation of archaeological or ethnological materials that have been illegally exported from another State Party or are in danger thereof. The exercise of this authority is contingent upon a request from a State Party, the cultural patrimony of which is in jeopardy from pillage. The agreements are to serve as the basis for a concerted international effort to thwart the pillage.

Section 208 implements article 7 of the Convention. This section simply declares illegal the importation into the United States of cultural property identified as appertaining to the inventory of a museum, a religious or public monument, or a similar institution in a State Party. This provision creates a juridical basis for actions, authorized in section 210, to recover the property.

Section 206 establishes a Cultural Property Advisory Committee comprised of representatives of the general public, and experts from the academic, museum, and art dealer communities. It is structured similarly to trade advisory committees established by section 135 of the Trade Act of 1974, and will advise the President concerning the requests of State parties for import controls and the scope and operation of such controls.

Sections 210-211 subject to seizure and forfeiture any articles imported in violation of sections 207 or 208. Pursuant to section 209, however, U.S. museums or similar institutions may retain the articles, subject to certain protections, until their final disposition is determined. Under section 212, certain articles are excluded from any controls authorized by this bill because they are entering this country solely for purposes of exhibition or because they have been held in this country for a significant period without challenge to the legitimacy of their procurement.

Sections 213-215 are administrative in nature.

As in the case of the earlier-passed H.R. 5643, this bill reflects the approach to illicit trade in art adopted by the Congress in the Pre-Columbian Art Act of 1972 (Pub. L. No. 92-587) with regard to a particular category of artifacts. The bill takes into account the reservation and understandings accompanying the grant by the Senate in 1972 of its advice and consent to ratification of the Convention. Further, it neither pre-empts State law in any way, nor modifies any Federal or State remedies that may pertain to articles to which the provisions of this bill apply.

REASONS FOR THE BILL

Background.—The increasing demand in recent years for archaeological and ethnological materials and antiquities has spurred, in most experts' opinions, a great increase in the international exchange of such materials. But unlike other commodities, increased or new production of these articles cannot rise to meet the demand. Instead, the increased supply results from the sales of known artifacts and those newly recovered from archaeological sites. The unique origin and character of these articles raises serious trade issues distinct from the normal concerns of the reciprocal trade agreements program or U.S. trade law.

No detailed data exist that provide reliable insights into either the precise nature or magnitude of trade in cultural property. As one expert points out: "It is easy to understand why we have little information. Much about the art trade simply is not knowable." Bator, An Essay on the International Trade in Art 34 Stan. L. Rev. 275, 291 (1982). Professor Bator suggests that this is because of the vast number of undiscovered or unidentified objects; the lack of resources among many nations to develop their cultural resources; and the secret nature of much of the trade. Nevertheless, the testimony to the committee on S. 1723 confirmed the evidence given in various Congressional fora in recent years and in many learned articles: the demand for cultural artifacts has resulted in the irremedial destruction of archaeological sites and articles, depriving the situs countries of their cultural patrimony and the world of important knowledge of its past. Further, because the United States is a principal market for articles of archaeological or ethnological interest and of art objects, the discovery here of stolen or illegally exported artifacts in some cases severely strains our relations with the countries of origin, which often include close allies. As stated by the Department of State in commenting on S. 1723:

> The legislation is important to our foreign relations, including our international cultural relations. The expanding worldwide trade in objects of archaeological and ethnological interest has led to wholesale depredations in some countries, resulting in the mutilation of ceremonial centers and archaeological complexes of ancient civilizations and the removal of stone sculptures and reliefs. In addition, art objects have been stolen in increasing quantities from museums, churches, and collections. The governments which have been victimized have been disturbed at the outflow of these objects to foreign lands, and the appearance in the United States of objects has often given rise to outcries and urgent requests for return by other countries. The United States considers that on grounds of principle, good foreign relations, and concern for the preservation of the cultural heritage of mankind, it should render assistance in these situations.

Witnesses before the committee also pointed out that the interest of the United States in this matter extends beyond our import market and our interest in fostering the careful study of foreign cultures. In recent years, the increasing interest in native American, Hawaiian, and Alaskan artifacts concommitantly has spurred the pillaging of U.S. historic sites. The destruction of such sites and the disappearance of the historic record evidenced by the articles found in them has given rise to a profound national interest in joining other countries to control the trafficking of such articles in international commerce.

These concerns led the United States in the late 1960's to participate in negotiations, sponsored by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), to achieve international agreement on the nature and means to address the problem. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property resulted from these negotiations. The Sixteenth General Conference of UNESCO adopted the Convention on November 14, 1970, by a vote of 77 to 1, with 8 abstentions. It entered into force (but not with respect to the United States) on April 24, 1972. Forty-five countries are now parties to the Convention.

As described by the Committee on Foreign Relations, the Convention generally encompasses the following obligations:

> The principle purpose of the convention is to combat the increasing illegal international trade in national art treasures, which in some countries has led to wholesale pillaging. To this end, the parties to the convention undertake to protect their own cultural heritage and to establish an export certificate for cultural property designated by each country as being of importance. They are also required to prohibit the import of cultural property stolen from museums, public monuments, or similar institutions and to take appropriate steps, upon request, to recover and return such cultural property provided that the state of origin is prepared to pay just compensation to an innocent purchaser or a person who has valid title. The parties further agree to take what measures they can, consistently with existing national legislation, to prevent museums and similar institutions within their territory from acquiring cultural property originating in another country which has been illegally exported after entry into force of the treaty.

Senate Committee on Foreign Relations, Exec. Rep. No. 92-29, 92d Cong., 2d Sess. 1 (August 8, 1972). Where a State Party's cultural patrimony is in jeopardy from pillage of identified types of archaeological or ethnological materials, the parties agree to apply import controls or other appropriate corrective measures.

After consideration by the Committee on Foreign Relations, which found no opposition to the Convention, the Senate unanimously gave its advice and consent to ratification on August 11, 1972. The Senate's action included one reservation and six understandings. One understanding made clear that the Convention is not self-executing and will have no domestic legal effect except as defined by implementing legislation.

The Department of State first proposed implementing legislation in 1973 to the 93d Congress, and again in 1975 to the 94th Congress. The House of Representatives approved an amended version of this legislation (H.R. 5643) in 1977, but the bill was not reported by the Committee on Finance. Legislation again was introduced in the 96th Congress, but no action was taken after hearings.

S. 1723 is the successor in this Congress to those earlier efforts. The Subcommittee on International Trade held a hearing on July 22, 1982, and took oral and written testimony from the Administration and representatives from the academic and art dealers' community. This will reflect amendments subsequently agreed to by all of these groups. The Committee adopted the bill, as amended, without objection as part of H.R. 4566 on September 15, 1982.

SECTION-BY-SECTION ANALYSIS

Section 201.—This section provides that this title may be cited as the "Convention on Cultural Property Implementation Act."

Section 202.—This section defines the essential terms of art employed in title II.

Only the term "archaeological or ethnological material of the State Party" requires fuller explication here. The Convention does not define this term. The definition is intended by the committee to reflect the understanding of U.S. negotiators that the application of import restrictions under agreements entered into under section 203 or emergency actions taken under section 204 is limited to a narrow range of objects possessing certain characteristics. As defined under section 202(2i), "archaeological material" includes any object which is of cultural significance, which is at least 250 years old, and which normally has been discovered through scientific excavation, clandestine or accidental digging, or exploration on land or under water. Archaeological objects are usually found underground or under water, or are discovered through excavation, digging, or exploration. However, the definition would also include objects which are typically regarded as archaeological (for example, frescoes from buildings), without regard to whether the particular objects are discovered by excavation or exploration.

The committee believes that the 250-year threshold age requirement ensures that the controls authorized by this Act will be applied to objects of significantly rare archaeological stature, while encompassing a range of important artifacts that are of a more recent vintage. For example, archaeological sites of importance in understanding the settlement of North America contain objects not greatly exceeding 250 years in age.

"Ethnological material" includes any object that is the product of a tribal or similar society, and is important to the cultural heritage of a people because of its distinctive characteristics, its comparative rarity, or its contribution to the knowledge of their origins, development or history. While these materials do not lend themselves to arbitrary age thresholds, the committee intends this definition, to encompass only what is sometimes termed "primitive" or "tribal" art, such as masks, idols, or totem poles, produced by tribal societies in Africa and South America. Such objects must be important to a cultural heritage by possessing characteristics which distinguish them from other objects in the same category providing particular insights into the origins and history of a people. The committee does not intend the definition of ethnological material under this title to apply to trinkets and other objects that are common or repetitive or essentially alike in material, design, color, or other outstanding characteristics with other objects of the same type, or which have relatively little value for understanding the origins or history of a particular people or society. An agreement or emergency action would also not apply to ethnological material produced by more technologically advanced societies. The Cultural Property Advisory Committee, as provided in section 206, will render the expert advice necessary to understand these terms in the context of particular cases.

Sections 203-205 and 207.—These sections implement Article 9 of the Cultural Property Convention, which states:

> Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other State Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

In decribing what is contemplated by this provision, the Committee on Foreign Relations stated that—

> at the UNESCO 16th General Conference, the U.S. delegate said before voting that in his view the procedure in article 9 for determination of concrete measures to deal with pillage of archaeological, or ethnological materials will permit the states affected to determine by mutual agreement the measures that can be effective in each particular case to deal with the situation and to accept responsibility for carrying out those measures on a multilateral basis. Two examples of such situations are (1) the case in which the remains of a particular civilization are threatened with destruction or wholesale removal as may be true of certain pre-Columbian monuments, and (2) the case in which the international market for certain items has stimulated widespread illegal excavations destructive of important archaeological resources.

Exec. Rep. No. 92-29, 92d Cong., 2d Sess. 5 (1972). The latter two situations are addressed in sections 204 and 203, respectively.

Sections 203(a) and (c) together comprise the substantive grant of authority for the President to enter into bilateral or multilateral agreements intended to provide U.S. cooperation towards protecting from the danger of pillage the archaeological or technological materials comprising the cultural patrimony of another State Party. The President, with the advice of the Advisory Committee established in section 206, must make several determinations prior to concluding such an agreement. In general, these are intended to ensure that the requesting nation is engaged in self-help measures and that U.S. cooperation, in the context of a concerted international effort, will significantly enhance the chances of their success in preventing the pillage.

Specifically, after a request by the victimized nation, the President may enter into agreements to apply the import controls authorized by section 207 if he determines the following:

(1) The cultural patrimony of the State Party is in jeopardy from pillage of its archeological or ethnological materials;

(2) the State Party has taken measures consistent with the Convention to protect its cultural patrimony;

(3) application of import restrictions, in the context of a concerted international effort, to archeological or ethnological material of the State Party would be of substantial benefit in deterring a serious situation of pillage, and less drastic remedies are not available; and

(4) application of import restrictions in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific and educational purposes.

The Committee intends these limitations to ensure that the United States will reach an independent judgment regarding the need and scope of import controls. That is, U.S. actions need not be coextensive with the broadest declarations of ownership and historical or scientific value made by other nations. U.S. actions in these complex matters should not be bound by the characterization of other countries, and these other countries should have the benefit of knowing what minimum showing is required to obtain the full range of U.S. cooperation authorized by this bill.

The concept that U.S. import controls should be part of a concerted international effort is embodied in article 9 of the Convention and carried forward in section 203. In previous years' consideration of various proposals for implementing legislation, a particularly nettlesome issue was how to formulate standards establishing that U.S. controls would not be administered unilaterally. The committee believes that the language now adopted, which amends that contained in S. 1723 and which is agreeable to all private sector parties that have contributed actively to the Committee's consideration of the bill, satisfies the twin interests of obtaining international cooperation while achieving the goal of substantially contributing to the protection of cultural property from further destruction.

The bill reflects the principle of participation in a concerted international effort in the following manner. Under section 203(a)(1)(C)(i), as a precondition to entering into an agreement the President must determine that import restrictions, "if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage. . . ." Section 203(c)(1) then specifically denies the President the authority to enter into an agreement unless these conditions are satisfied. The determination of which countries have a significant import trade in the material that is in jeopardy of being pillaged, and whether the effort will help to ameliorate the problem, is within the discretion of the President. These decisions inherently preclude precise determination, given the goals of the Convention and the uncertain factual basis for them. For example, whether a country has a "significant import trade" may be a function of not only value of imports, but type and historic trading patterns. Therefore, a measure of Presidential judgment is required. Nevertheless, the committee believes the standards set forth in this section, together with active contributions by the Advisory Committee to the Administration's decisionmaking process, will ensure that the President will enter into agreements only in accord with the purposes and standards of the bill.

It is the committee's further intent that the formula measuring the presence and worth of a "concerted international effort" not be so mechanical as to preclude the conclusion of agreements under section 203(a) where the purposes of the legislation nevertheless would be served by doing so. Therefore, the Committee adopted in section 203(c)(2) a limited exception to the general requirement laid down by section 203(c)(1). This exception allows the President, once he has identified the significant importing nations the participation of which ordinarily would be expected to comprise a concerted international effort, to enter into agreements without the participation of all such nations. To do so, he must determine with regard to particular such nations that they are not implementing similar import controls but—

(A) such restrictions are not essential to deter a serious situation of pillage, and

(B) the application of the import restrictions set forth in section 207 in concert with similar restrictions implemented, or to be implemented, by other nations (whether or not State Parties) individually having a significant import trade in such material would be of substantial benefit in deterring a serious situation of pillage.

The essential nature of a concerted international effort is thus preserved, while the president is allowed to move forward without the full participation of nations the contributions of which are not essential to amelioration of the problem.

Section 203 contains other limitations on the President's agreement-making authority. Subsections (b) and (e) limit the term of the agreements to five years, with the possibility of extension for additional five-year periods if, after an opportunity for public comment and Advisory Committee review, the President determines that the circumstances warrant an extension. Further, under subsection (d) the President must suspend an agreement if he determines that the circumstances originally constituting the basis for its entry into force no longer obtain.

Section 204 authorizes the President to impose the import restrictions set forth in section 207 on archaeological or ethnological materials of any State Party if he determines that an emergency condition exists with respect to such material. The emergency restrictions may not apply for more than 5 years, although they may be extended for one additional period of not more than 3 years if the emergency persists. Subsection (a) defines "emergency condition" as a situation in which the archaeological or ethnological material of a State Party is one of the following:

(1) newly discovered material important for understanding the history of mankind and in jeopardy from pillage, dismantling, dispersal, or fragmentation;

(2) identifiable as coming from a site of high cultural significance in jeoparrdy from pillage, dismantling, dispersal, or fragmentation which is or threatens to be of crisis proportions; or

(3) part of the remains of a particular civilization, the record of which is in jeopardy from pillage, dismantling, dispersal or fragmentation which is or threatens to be of crisis proportions.

In addition, the President must determine that application of temporary import restrictions would reduce the incentive for such pillage, dismantling, dispersal, or fragmentation, in whole or in part.

Besides time limitations, subsection (c) imposes two limitations on the emergency authority. First, it prohibits the President from implementing section 204 unless the State Party made a request to the United States as in section 203(a) for assistance under Article 9 of the Convention. However, the State Party need not indicate in tis request that an emergency condition exists as a necessary precondition to the use of the emergency authority, although the information provided in its request must support such a funding. Second, before making his decision on emergency action, the President must consider the views and recommendations of the Advisory Committee on the use of the emergency authority if the committee has submitted its report to him within 90 days after the President provides it information on the request of the State Party. The information provided by the President should include any indication by the State Party of an emergency situation.

Section 204(c)(4) provides the President with additional means to continue the emergency import restrictions after an agreement is concluded. This subsection provides that when an agreement is concluded under section 203 or the Senate has given its advice and consent to a treaty, the President may continue to apply the emergency import restrictions to the covered articles, as originally promulgated or as modified, for a period lasting until their expiration under the agreement or treaty.

In order to carry out the import restrictions contemplated by agreements entered into pursuant to section 203 or by the emergency authority granted by section 204, the specific types of archaeological or ethnological materials that will be restricted must be identified. Section 205 authorizes the Secretary of the Treasury to do so by regulation. The Secretary will consult with the Director of the United States Information Agency before promulgating such a list, as the latter is responsible for servicing the work of the Advisory Committee that is expected to contribute heavily to the composition of the list. The Secretary may list such material by type or other classification but each such listing must be sufficiently specific and precise to serve the two purposes of ensuring that (1) the import restrictions are applied only to material covered by the agreement or emergency action (that is, pillage is creating the jeopardy to the cultural patrimony of the State Party found to exist under section 203 or section 204); and (2) importers and other interested persons are provided fair notice of what archaeological or ethnological material is subject to import restrictions.

Section 207 bars the importation of any article designated for restriction under section 205 unless it is accompanied by proper export documentation from the originating State Party, or unless satisfactory evidence is adduced that the export occurred either before the designation or more than 10 years prior to the entry and the importer involved or a "related person" did not acquire an interest in the article prior to one year before entry. Section 207(d) defines "related persons" for this purpose. The committee believes these requirements strike a fair balance between the authority necessary to avoid circumvention of and to enforce "related persons" to this end. The committee believes these requirements strike a fair balance between the authority necessary to avoid circumvention of and to enforce controls this Government undertakes to implement, and the desire to lessen the burden of such restrictions on normal art trade and on innocent purchasers of art.

Entries failing to met the requirements of this section are subject to seizure and forfeiture pursuant to section 210. Indeed, even if an item is permitted to enter the country, it may be seized under section 210 if it was subject to seizure had the facts been known. In order to obtain entry in the first instance, a consignee must present "satisfactory evidence" that these requirements are satisfied. Under section 207(c), such evidence in general consists of a declaration under oath by the consignee attesting to the necessary facts and statements by the consignor to the same effect together with the reasons upon which he bases these statements. The committee understands the latter requirement of providing reasons to mean that the consignor must present to the Customs officer a substantial basis for his assertions in the statement. Although this section thus recognizes the difficulties in obtaining sworn declarations by foreign consignors, it requires more than a superficial meeting of the requirements of "satisfactory evidence."

Section 206.—The exercise by the President of the authorities provided in sections 203–205 will require substantial input from knowledgable representatives of the private sector. Section 206 establishes a Cultural Property Advisory Committee for this purpose.

The eleven members of the Advisory Committee will include two members representing the interests of museums; three archaeologists, anthropologists, or experts in related fields; three persons representing the interests of art dealers; and three representatives of the general public. While following the same division of interests, the committee rejected the formulation in S. 1723 of enumerating specific associations, each of which would nominate a few names from which the President would be required to select his appointments. This approach raises a serious question of unconstitutional infringement of the President's appointment power. Of equal concern would be the deviation from the established practice of creating trade advisory committees adopted in section 135 of the Trade Act of 1974 (19 U.S.C. 2155). While the associations listed in S. 1723 doubtless will provide a rich source of qualified persons for consideration by the President, the committee concluded that to avoid any appearance of unfairness in the appointments process, the pool of qualified nominees should not be arbitrarily restricted to certain private groups.

In other respects also, the committee chose to follow the established structure of trade advisory committees. under section 206(b)(3), appointments will be on a renewable 2-year basis. Subsection (h) ensures that in operation the Advisory Committee will conform to the strictures of the Federal Advisory Committee Act (5 U.S.C. app. I, sec. 1 *et seq*). Subsection (c) would establish a limited statutory exception to the Freedom of Information Act, in addition to the exemptions already contained therein. The committee believes this exception is warranted because of its limited nature, the restricted scope of Advisory Committee functions, and the nature of the information involved which, if released, could adversely affect the President's ability to negotiate agreements authorized by this Act. As the Advisory Committee's role is limited to pre-negotiation determinations, it is expected that this provision will apply to only a small volume of information. Subsection (j) confirms that private sector Advisory Committee members are not expected, on the basis of this legislation alone, to have a role in negotiating agreements to which this bill pertains.

Section 206(d) provides that a majority of the eleven Advisory Committee members shall constitute a quorum, and that it may act by majority vote of those present and voting. As the Advisory Committee is required to adhere to certain time limits if its advice is to be considered by the President, this provision will assist it in proceeding with business in the absence of several members.

Section 206(e) establishes the United States Information Agency as the secretariat of the Advisory Committee. Other agencies, particularly the Departments of State, Justice, the Treasury, and the General Services Administration are expected to facilitate the Advisory Committee's operations in every reasonable way.

Sections 206 (f) and (g) set forth the substantive responsibilities of the Advisory Committee. under subsection (f), it will report on requests for assistance by other State Parties and whether agreements or emergency measures would be the proper response. The reports are to contain substantive analyses and recommendations, and any dissents. The Advisory Committee will also review existing agreements and emergency controls and report on the need for extending or suspending such agreements or emergency controls. Through this mandate, the committee believes the Advisory Committee will play a prominent role in achieving effective implementation of this bill.

Section 208.—Section 208 implements article 7(b)(i) of the Convention, which requires State Parties to undertake to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution.

Section 208 prohibits the importation of any article of cultural property stolen from the inventory of a museum or religious or secular monument or similar institution. "Cultural property" is defined to include the categories of articles listed in article 1 of the Convention, whether or not the article is specifically designated by the State Party for this purpose. The term thus is broader than but inclusive of "archaeological or ethnological material." This provision will apply to items of cultural property stolen from a broad range of institutions and public monuments in State Parties. In addition to public museums, the language is intended to cover cathedrals, temples, shrines, and other such edifices or sites open for public visitation or scientific study. Examples include the Wailing Wall in Jerusalem; Pompeii, Italy; Teotihuscan, Mexico; Angkor Wat, Cambodia; the Colosseum, Rome; Arc de Triomphe, Paris, etc. Covered are facades, murals, internal and external. ornamentation, statuary, paintings, objects of artistic or religious significance, etc., affixed to, or located in or on such edifices or sites.

An article of cultural property would be covered by section 208 if it were listed in the inventory of a particular institution or if it were affixed to or located in or on an edifice or site which itself is included in an inventory. The committee intends the language "documented as appertaining to the inventory" to be read broadly in the context of the actual practices by which nations identify and maintain their cultural treasures, not only in museums but also those associated with monuments. "Documented," for example, is intended to cover photographic and other types of evidence in addition to formal museum records. Further, "inventory" should be broadly construed where public and religious monuments and similar institutions are concerned.

Section 208 takes effect with respect to any article stolen after the effective date of this act or after the date the convention enters into force for the State Party, whichever is later. This is without regard to whether or not the United States has an agreement under section 203 or has taken emergency action under section 204 to restrict importation of archaeological or ethnological material from that State Party.

Section 209.—Section 209 provides for temporary retention of any archaeological or ethnological material or article of cultural property in a public museum or other cultural or scientific institution in the United States pending a final determination of whether the material or article was imported in violation of sections 207 or 208. The Secretary of the Treasury will permit retention upon application by an institution if he finds that the institution will take sufficient safeguards to protect the material or article and will post sufficient bond to insure its return to the Secretary.

Sections 210–211.—Sections 210 and 211 contain the provisions for seizure, forfeiture, and disposition of archaeological or ethnological material or of stolen articles of cultural property imported in violation of sections 207 or 208.

Section 210 contains the seizure and forfeiture provisions and the conditions for return to the State Party of protected material or articles which are forfeited to the United States. Subsection (a) provides that any designated archaeological or ethnological material or article of cultural property imported in violation of section 207 or 208 will be subject to seizure and forfeiture. All provisions of law relating to seizure, forfeiture, and condemnation for violation of the customs law apply insofar as they are applicable to and not inconsistent with provisions of this Act.

The Committee agreed to amend S. 1723 to allow both summary and judicial forfeiture proceedings. It accepted the argument of the Administration and others that many articles potentially subject to forfeiture are likely to be small in value, and neither the consignee nor the Government will wish to bear the costs of a judicial proceeding concerning them. Further, the limited resources of the courts should not be diverted to these minor cases if the parties do not wish to undergo such proceedings. Finally, anyone seeking judicial forfeiture may do so by posting a small bond; therefore, eliminating the requirement of judicial forfeiture proceedings does not abridge any rights or opportunities of the defendant.

Subsection (b) specifies that any archaeological or ethnological material imported in violation of section 207 and forfeited to the

United States must first be offered for return to the State Party. The object will be returned if the State Party bears the expenses of return and delivery and complies with any other requirements related to the return prescribed by the Secretary of the Treasury. Otherwise, the object will be disposed of as prescribed for articles forfeited for violation of the customs law, unless the claimant establishes valid title to the material and that he is a bona fide purchaser for value of it.

Subsection (c) specifies that any action for forfeiture of an article of cultural property imported in violation of section 208 is subject to the following alternative resolutions:

1. If the claimant establishes valid title as against the institution from which the article was stolen, forfeiture will not be decreed unless the State Party requesting its return agrees to pay the claimants holding valid title just compensation.
2. If the claimant does not establish valid title but establishes his purchase for value without knowledge or reason to believe the article was stolen, than forfeiture will not be decreed unless (a) State Party to which the article is to be returned pays that innocent purchaser and amount equal to what he paid for the article, or (b) the United States establishes that the State Party as a matter of law or reciprocity would in similar circumstances recover and return an article stolen from a United States institution without requiring payment of compensation.

Implementation of article 7(b) of the Convention affects neither existing remedies available in State or Federal courts nor laws prohibiting the theft and the knowing receipt and transportation of stolen property in interstate and foreign commerce (e.g., National Stolen Property Act, Title 18, U.S.C. Sections 2314–15), including the possible recovery of stolen property for the rightful owner in the courts without payment of compensation. Article 7(b)(ii) of the Convention specifically requires that an offer of just compensation be made to a person holding valid title to, or to an innocent purchaser of, an article of cultural property by the State Party requesting its return. However, innocent purchasers who do not acquire valid title as against the true owner may not be entitled to compensation under applicable municipal laws in the United States. Consequently, the fourth understanding adopted by the Senate in its advice and consent to ratification of the Convention, as reflected in section 210(c), provides that the United States is prepared to return recovered stolen cultural property without payment of compensation if it establishes before the court as a matter of law or reciprocity that the claiming State Party would in similar circumstances recover and return an article stolen from an institution in the United States without requiring payment of compensation. It is considered that reciprocity would have to be shown by a Government decree, proclamation, written commitment, written, opinion, or other such evidence.

Section 211 establishes the evidentiary requirements for any forfeiture proceeding under this Act in which archaeological or ethnological material or an article of cultural property is claimed by any person. Nothwithstanding section 615 of the Tariff Act of 1930, the burden of proof will be on the United States in such proceedings to establish that material subject to section 207 has been designated by the Secretary of the Treasury under section 205 as covered by an agreement with a State Party or by an emergency action. In the case of an article of cultural property, the United States must established that the article appertains to the inventory of a museum or similar institution in a State Party and was stolen from that institution after the effective date of this Act or after the date the Convention entered into force for the State Party concerned, whichever is later.

Section 212.—Section 212 exempts archaeological or ethnological material or article of cultural property from the provisions of the Act under any of the following circumstances:

1. Material or articles imported into the United States for temporary exhibition or display are exempt if they are immune from seizure under judicial process pursuant to 22 U.S.C. 2459. To achieve such immunity, the President or his designee must have determined prior to importation of the object that it is of cultural significance and that its temporary exhibition or display within the United States is in the national interest, and he must have published notice to this effect in the Federal Register.
2. Material or articles held at least three years in the United States by a public institution that openly procured, displayed, or publicized its possession of the objects.
3. Material or articles held in the United States for at least 10 consecutive years from the date of the importation and (a) exhibited for at least 5 years during that period in a recognized museum, religious, or secular monument, or similar institution, or (b), if (a) does not apply, the State Party received or should have received fair notice through publication or other means, to be prescribed by regulation, of its location within the United States during this period.
4. If none of the above apply then the material or articles have been in this country for at least 20 years and the claimant purchased them without awareness of their illegal origin.

The purpose of these exceptions is to provide a time certain when an adequate opportunity to identify and to recover illicitly traded art will have been afforded, and rights to objects can be settled.

Section 213.—Section 213 authorizes the Secretary of the Treasury to prescribe rules and regulations as necessary and appropriate to carry out the act.

Section 214.—Section 214 provides for custom officers to enforce the Act in the United States customs territory and in the Virgin Islands. The President will designate persons to enforce the act in other United States territories or areas outside the customs territory or Virgin Islands.

Section 215.—Section 215 provides for the act to take effect on the 90th day after enactment, or on a prior date after enactment that the President prescribes and publishes in the Federal Register if he has appointed the initial members of the Advisory Committee. The President may appoint the Advisory Committee members any time after the date of enactment of this act.

TITLE III. THE RECIPROCAL TRADE AND INVESTMENT ACT OF 1982

I. SUMMARY

The committee bill would amend Titles I and III of the Trade Act of 1974 by mandating new specific sector negotiating objectives with respect to trade in services, high technology products, and restrictions on foreign direct investment; by giving the President tariff modification authority on certain high technology items; by authorizing the establishment of intergovernmental advisory committees; by requiring the United States Trade Representative to analyze and report on significant barriers to trade in U.S. products and services and restrictions on foreign direct investment by U.S. persons; by clarifying the President's authority to retaliate with respect to any goods or sector, whether or not involved in the act retaliated against and to take action notwithstanding any other delegation of authority to regulatory agencies; by providing the President with the authority to propose "fast track" legislation under the authority of sections 102 and 151 of the Trade Act to carry out the objectives of section 301; by defining the term "commerce" to include foreign direct investment with implications for trade in goods and services, thereby permitting the President to retaliate against restrictions on such investment; by statutorily defining the terms "unjustifiable", "unreasonable", and "discriminatory"; by providing for the initiation of section 301 investigations by the USTR; by providing for delays of up to 90 days in the initiation of international consultations required by section 303; and by providing a specific exemption from the requirements of the Freedom of Information Act for information supplied under specified conditions during an investigation under section 301 and restrictions on the use of such information.

II. GENERAL EXPLANATION

BACKGROUND

In section 102 of the Trade Act of 1974 (the Trade Act), the Congress found that barriers to (and distortions of) international trade were reducing the growth of foreign markets for the products of United States agriculture, industry, mining, and commerce, diminishing the intended mutual benefits of reciprocal trade concessions, adversely affecting the United States economy, preventing fair and equitable access to supplies, and preventing the development of open and nondiscriminatory trade among nations. The Trade Agreements Act of 1979 implemented in U.S. law a number of agreements reached during the "Tokyo Round" of Multilateral Trade Negotiations dealing with many of these barriers. During the course of a number of hearings (see, for example, Issues Relating to the Domestic Auto Industry III, December 1, 1981, Oversight of U.S. Trade Policy, July 8, 9, 13, and 28, 1981 and S. 2094 and other Reciprocity Bills March 24 and May 6, 1982) since the passage of the Trade Agreements Act the Committee on Finance has received testimony concerning continued limitations on access to foreign markets facing U.S. products and services and the restrictions placed on U.S. foreign direct investment. Such limitations and restrictions have become increasingly prevalent as a result of a number of factors including changing world trade patterns, technological developments, foreign domestic industrial policies, and economic conditions. These developments have stimulated a search for areas in which the multilateral system and domestic law can be improved to deal with these new problems.

Even though progress has been made in the reduction of tariff and nontariff barriers to trade in goods through successive rounds of multilateral trade negotiations, much remains to be done. Areas of substantial and increasing importance to the United States are not yet the subject of adequate international discipline. Those areas include trade in services, trade distorting investment restrictions and trade in high technology goods.

In November 1982, the trade ministers of the member countries of the General Agreement on Tariffs and Trade will meet to examine and improve the functioning of the trading system. In S. Res. 386 the committee recognized the importance of a successful GATT ministerial and expects the administration to obtain agreement on the initiation of work programs on the emerging issues of trade in services, trade distorting investment restrictions, and trade in high technology goods.

The principal authority of the President in U.S. law to take action against restrictions on the access of U.S. products and services to foreign markets in section 301 of the Trade Act. This authority, which was amended in the Trade Agreements Act of 1979, originated in authority granted to the President 60 years ago.

The Act of September 21, 1922, provided the President with authority to take action against the products of foreign countries which placed unfair burdens on the commerce of the United States. This authority was repealed in the Tariff Act of 1930 but was replaced by similar provisions in section 338 thereof. Under section 338 the President is authorized to impose additional duties on articles from any foreign country imposing discriminatory restrictions on products of the United States.

While the President's authority to take action under section 338 of the Tariff Act of 1930 is limited to those situations in which the U.S. products are discriminated against, his authority was not so limited in section 252 of the Trade Expansion Act of 1962. Under this provision, the President was given various authorities to respond to foreign trade practices depending on the type of restriction involved. If an "unjustifiable" restriction impaired the value of tariff commitments made to the United States, oppressed U.S. commerce, or prevented the mutually advantageous expansion of trade, the President, in addition to exercising whatever other authority he had to eliminate such restrictions, was directed to refrain from negotiating further tariff reductions with offending country or to withdraw benefits already proclaimed. If, however, the foreign import restrictions were imposed on U.S. agricultural products, the President was directed, notwithstanding any other trade agreement, to impose duties or import restrictions as he deemed necessary on the products of the offending country to prevent the establishment of or to obtain the elimination of the import restricting measures.

If the restrctions were "unreasonable" (but not necessarily in violation of any international agreement) the President was permitted (but not required) to withdraw trade agreement concessions or refrain from proclaiming such concessions. The President was permitted to do so, however, only after taking into consideration the international obligations of the United States.

The Trade Act repealed a number of provisions of the Trade Expansion Act of 1962, including section 252. The section was replaced by section 301 of the Trade Act, which was similar to section 252 in some respects but also contained significant differences. Section 301 provided the President with the authority to take action against "unjustifiable", "unreasonable", or "discriminatory" restrictions which burdened or restricted U.S. commerce. In addition, section 301 specifically listed subsidies and restrictions on access to supplies of food, raw materials, and manufactured products as unfair actions against which the Presidents could retaliate but deleted the specific retaliatory authority with respect to restrictions on U.S. agricultural exports.

As in the 1962 Act, the President was given authority under section 301 to take all appropriate steps otherwise within his authority to obtain the elimination of the restrictions in question as well as the authority to suspend trade agreement concessions or impose duties or other import restrictions on the products of the offending country. In addition, the coverage of section 301 was expanded to include services associated with international trade. Thus, restrictions on both U.S. products and services could be retaliated against and the retaliatory actions which the President was authorized to take were expanded to include actions against services offered by the offending foreign countries as well as their products. Section 301 also established a procedure permitting the filing of complaints with the Special Representative for Trade Negotiations (now the USTR).

CURRENT LAW

Two major changes were made to section 301 by the Trade Agreements Act of 1979. The President's authority was expanded in order that he would have clear authority to pursue U.S. rights under any applicable trade agreements and time limits were established for the conclusion of section 301 investigations.

Under section 301, as amended, the President is authorized, where appropriate, to use the authority set forth therein to enforce U.S. rights under trade agreements, including the various nontariff agreements negotiated in the MTN. Section 301, as amended, specifically provides a process through which private parties, as well as the U.S. Government, can seek enforcement of rights created by these agreements. It requires that consultations be initiated under the dispute settlement procedure of the applicable international agreement, if any. The time requirements set forth in section 301 within which the President must act are also keyed to the dispute settlement procedure in the particular agreement under which the complaint is brought.

The President is also authorized, where appropriate, to use section 301 to respond to any "act, policy, or practice" of a foreign country that is inconsistent with the provisions of or denies benefits to the United States under any trade agreement, or is "unjustifiable," unreasonable," or "discriminatory" and burdens or restricts United States commerce. All acts, policies, or practices covered under the 1974 Act are covered under section 301, as amended, notwithstanding the deletion of the specific reference to subsidies and access restrictions as unfair acts. Amendments to the 1979 Act also clarified that U.S. "Commerce" includes all services associated with international trade and not just those associated with trade in merchandise.

The President's retaliatory authority remained basically unchanged in the 1979 Act. He is authorized to take any action otherwise within his authority to respond to the foreign unfair actions. He is also authorized to suspend, withdraw, impose, or modify trade agreement concessions or impose duties or other import restrictions or fees on the products or services of the foreign country.

Another change made by the 1979 Act was to provide a procedure through which the public could request from the USTR certain information on foreign trade policies or practices. If such information is not available, the USTR is required to request it from the relevent foreign government or decline to do so and inform the person making the request in writing of the reasons for refusing.

THE COMMITTEE BILL

The bill approved by the Committee would make the following changes to the Trade Act:

(1) A new section 104A would be added providing specific negotiating objectives with respect to trade in services, high technology products, and restrictions on foreign direct investment;

(2) Section 135, which sets up a procedure through which trade negotiating advice is received from the private sector, would be amended to authorize the establishment of intergovernmental advisory committees;

(3) A new section 181 would be added requiring annual national trade estimates on significant barriers to the exportation of U.S. goods and services and restrictions on U.S. foreign direct investment and consultations with the Finance and Ways and Means Committees on trade policy priorities to enhance market opportunities;

(4) Section 301 would be amended to authorize specifically the President to retaliate against any goods or sector, whether or not involved in the act retaliated against and the President would specifically be authorized to retaliate against a good or service notwithstanding the authority of regulatory agencies to deal with the same matters;

(5) Section 301 would be amended to authorize the President to retaliate against restrictions on foreign direct investment by U.S. persons with implications for trade in goods and services, or to otherwise carry out the objectives of 301 by proposing "fast track" legislation under the authority of sections 102 and 151 of the Trade Act of 1974;

(6) Section 301 would be amended by statutorily defining the terms "unreasonable", "unjustifiable" and "discriminatory" which currently exist in section 301 but are not defined;

(7) Section 302 would be amended to provide for the self-initiation of section 301 investigations by USTR;

(8) Section 303, which currently provides that international consultations must be initiated on the same date as an investigation is instituted under section 301 would be amended to provide for a delay of up to 90 days before the initiation of consultations; and

(9) Section 305 would be amended to provide for a specific exemption from the Freedom of Information Act for information received during an investigation under section 301 and restrictions on the use of such information.

SECTION-BY-SECTION ANALYSIS

Section 301 of the bill sets forth the short title, "the Reciprocal Trade and Investment Act of 1982".

Section 302 sets forth the statement of purposes of the bill. These purposes include the fostering of U.S. economic growth and employment by expanding competitive U.S. exports through the achievement of commercial opportunities in foreign markets substantially equivalent to those accorded by the United States; improving the ability of the President to identify and analyze barriers to U.S. trade and investment; encouraging the expansion of international trade in services through the negotiation of international agreements; and enhancing the free flow of foreign direct investment through the negotiation of bilateral and multilateral agreements.

Section 303 requires annual national trade estimates, reports to Congress on action taken (including but not limited to any action under section 301) on matters identified in the national trade estimates and administrative provisions related to these estimates. Under present law the Executive Branch has been slow to identify critical problems and to take advantage of trade agreements to enforce United States rights of access. Formulating national trade estimates is a step in the direction of a more active policy of enforcing United States rights under trade agreements and identifying objectives for future negotiations. Under *subsection (a)* the USTR, through the interagency Trade Policy Committee, would be required to identify the acts, policies, and practices which constitute significant barriers to or distortions of U.S. exports of goods or services and U.S. foreign direct investment. In addition to foreign barriers, these could include U.S. export disincentives.

The bill specifies that the USTR shall identify and analyze acts, policies, and practices which restrict or distort foreign direct investment by U.S. persons especially if such investment has implications for trade in goods or services. It is the Committee's intention that the USTR should focus its efforts in the area of trade related investment issues and not on other issues, such as the expropriation of U.S. investments in foreign countries.

The bill also requires the USTR to make an estimate of the trade distorting impact of any act, policy, or practice identified. In making the national trade estimates the USTR is directed to take into account a number of specified factors including the relative impact of the barriers, the availability of relevant information, and the extent to which the barriers are subject to international agreements as well as advice received under the advisory committee process. It is the committee's intention in using the word "significant" and setting forth these factors among others be considered that the USTR will proceed against those barriers to the expansion of market opportunities which are most important in terms of U.S. commercial interests and with respect to which there is the greatest likelihood of achieving solutions, particularly within accepted international procedures.

The specific inclusion of the Trade Policy Committee in this process is intended to make clear that the bill in no way serves to reorganize existing agency functions. Rather the structure established under section 242(a) of the Trade Expansion Act of 1962 is to continue to be utilized. While it is the intention of the committee that the national trade estimates should be as specific as practicable, it is not intended that they serve to prejudge or prejudice any petitions which have been or may be brought under the dispute settlement process.

Subsection (b) requires the USTR to submit the analysis and estimate within one year of the date of enactment of the bill and annually thereafter to the Committees on Ways and Means and Finance. These reports are to include information on any action being taken with respect to the actions which have been identified and analyzed including but not limited to actions under section 301 or international negotiations or consultations. While not requiring that any particular action be taken, the committee intends that the USTR should consider vigorously utilizing existing authorities and dispute settlement procedures to deal with the identified barriers and distortions. This subsection also requires the USTR to keep the Ways and Means and Finance Committees currently informed on trade policy priorities for the purpose of expanding market opportunities. These consultations are not statutorily tied to the analysis and reporting requirements, but it is the Committee's intention that the required consultations draw heavily on the information and estimates developed during this process. Information contained in national trade estimates may be classified or otherwise not be made public to the extent appropriate to the information contained therein.

In carrying out the requirements of this section, the head of each department or agency of the executive branch of the Government is authorized and directed to furnish to the USTR, or to the appropriate agency upon request such data, reports, and information as necessary for the USTR to carry out his functions under this section. The authorization for agencies to furnish information to the "appropriate agency" is intended only to maintain existing interagency reporting relationships, such as that of the Federal Reserve with the Department of the Treasury, and is not intended to impair the ultimate transmission of information to the USTR. It is the committee's intention that this authority should be used by the USTR to request only that information which is reasonably available to the particular agency. It is not intended to be a general grant of authority to require such agencies to gather information. The information may be requested and used to the extent not otherwise inconsistent with law. This specific limitation is intended by the committee to make clear that information such as that obtained by the IRS is not within the scope of that which could be requested by or released to the USTR. It is also the Committee's intention that information to be made available to the USTR would be provided subject to lawful regulations governing the protection of national security, business confidential, or otherwise privileged information.

Section 304 of the bill makes a number of amendments to Title III of the Trade Act of 1974. Sections 301(a) currently provides that action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved. The bill would amend current law to provide that the President may exercise his authority with respect to any goods or sector, on a nondiscriminatory basis or solely against the foreign country or instrumentality involved and without regard to whether or not such goods or sector were involved in the act, policy, or practice identified. This change in language is not intended to confer new retaliatory authority to the President; rather it is intended to clarify the President's existing authority. The use of the word "product" in current law has raised questions as to whether its scope is limited to articles which have undergone some manufacturing or productive process. The use of the word "goods" is intended to clarify that the President would have the authority to retaliate against any article whether or not it had undergone processing. Similarly the change from the word "service" to "sector" is intended to clarify that the President, in acting under section 301, could exercise his powers with respect to services offered by foreign countries or foreign nationals as well as with respect to foreign direct investment in the United States either under legislation proposed under the "fast track" authority which would be established or any other independent grant of authority. At present such authority appears to be limited to the Mineral Lands Leasing Act of 1920 (30 USC 181).

Section 301(b) currently authorizes the President to retaliate by (1) modifying trade agreement concessions and by (2) imposing duties or other import restrictions on the products of or fees or restrictions on the services of a foreign country. The bill would make the conforming change of the word "goods" for the word "products" and would insert the phrase "notwithstanding any other provision of law" before the word "impose". This amendment is intended to clarify the President's existing authority to impose restrictions notwithstanding the authority of an independent agency. While the authority of the President under section 301 is thus broad, the Committee does intend it be used with discretion. It may appropriately be used to impose restrictions on services previously licensed by an independent agency or by denying the grant of such a license but the Committee does not anticipate the authority would be used to override U.S. treaty obligations.

The bill would also amend section 301(b) by adding a new subsection (3) authorizing the President to propose "fast track" legislation under the procedures of sections 102 and 151 of the Trade Act of

1974 to carry out the objectives of section 301 where additional retaliatory authority may be necessary. The bill would also amend the definition of the term U.S. "commerce" to include foreign direct investment by United States persons with implications for trade in goods or services. It is not the Committee's understanding, however, that this language would preclude the USTR from conducting an investigation, where appropriate on restrictions on portfolio investiments. This would permit the President to propose "fast track" legislation providing from retailation against, or designed to encourage the elimination of, restrictions on U.S. foreign direct investment. The Committee does not intend that the authority to propose "fast track" legislation in any way restrict the President's authority to propose legislations under nonfast track procedures. The choice of whether or not to utilize the "fast track" would be solely within the President's discretion. Under the bill all the requirements for "fast track" legislation set forth in sections 102 and 151 would be applicable, including 90 days consultation with the congizant committees prior to submitting such legislation.

Section 301(d) currently contains a definition of the term "commerce". As set forth above, the bill would amend subsection (d) by amending the term "commerce" to include foreign direct investment by United States persons with implications for trade in goods and services and would also include in that subsection definitions of the terms "unreasonable", "unjustifiable", and "discriminatory", which currently exist in section 301 but are not statutorily defined. The definitions of the latter three terms are not intended to expand the scope of the President's authority with respect to the types of acts against which he can retaliate. Rather, it is the committee's intention that the definitions clarify existing law and give emphasis to the President's authority to retaliate against certain types of acts, policies, and practices.

The term "unreasonable" is defined as any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, a denial of fair and equitable market opportunities, opportunities for the establishment of an enterprise, or provision of adequate protection of industrial property rights. The phrase "fair and equitable" is not defined, since it remains within the President's discretion to determine when circumstances exist which require action under this provision. The committee believes the President will take into account a broad range of factors in making his determination as to when to proceed, but by including a specific noninclusive list in the bill wishes to emphasize that certain acts, policies and practices which are not necessarily in violation of specific international agreements are becoming increasingly harmful to U.S. interests and should be dealt with accordingly.

Performance requirements and other restrictions which impair or distort the free flow of capital and inhibit U.S. firms from establishing themselves and operating abroad are increasing. The committee has also received testimony and information concerning increasingly frequent problems regarding the denial of adequate protection by foreign countries of U.S. intellectual property rights. The term "intellectual property rights" is intended to be understood in the broadest sense and shall include patents, trademarks, trade names, copyrights, and trade secrets. Some of the problems involve: broad areas of invention not subject to patent coverage, such as chemical products; patents of narrow scope which can easily be worked around; unreasonable forced licensing and forfeiture provisions for patents; unduly short patent rights involving the inability to enjoin infringement, very low token fines where infringement is proved, protracted delay of proceedings with no interim relief available to the patent holder, practically impossible burdens of proof of process infringement placed on patent holder, and the like.

The committee believes that in determining whether adequate protection is being provided for such rights the President should consider the scope and degree of protection of the foreign country's laws and procedures. A key factor in the USTR's determination of whether to initiate a section 301 petition should be a consideration of the appropriate legal action available to, or taken by, the aggrieved United States party to defend its rights in the subject country. The committee expects, however, that if the U.S. Trade Representative determines not to initiate a section 301 petition, due to pending action by a foreign country's judiciary, action on the petition should be postponed only for a reasonable period of time.

The term "unjustifiable" is defined as any act, policy or practice which is in violation of or inconsistent with the international legal rights of the United States, including but not limited to a denial of national or most-favored-nation treatment, the right of establishment or a denial of protection of industrial property rights. It is the belief of the committee that this definition conforms with existing law and legislative history and is not an expansion of the category of unjustifiable actions against which retaliation can be taken. The definition continues to address actions by a foreign government which are inconsistent with U.S. international legal rights.

The term "discriminatory" is defined as including where appropriate any act, policy, or practice which denies national or most-favored-nation treatment to U.S. goods, services, or investment. The phrase "where appropriate" has been included in the definition only to take into account those situations in which a denial of national or most-favored-nation treatment, for example in the case of a GATT-compatible customs union, is not an appropriate basis for action.

The bill amends section 302 of the Trade Act by authorizing the USTR to initiate investigations under section 301. According to testimony received by the committee, in many cases U.S. exporters adversely affected by foreign practices inconsistent with U.S. trade agreement rights do not petition for assistance under section 301 for legitimate reasons, such as lack of information or a fear of retaliation. Therefore a vigorous policy of self-initiation is necessary to preserve U.S. market access under existing trade agreements. Under current law the President is authorized to take action either as a result of petition-initiated investigation or on his own motion by modifying duties or imposing fees or restrictions, but the USTR is not authorized to initiate investigations on the basis of which advice could be provided to the President. While providing authority for the USTR to initiate investigations, the bill provides that a decision to do so could only be taken after consultation with the appropriate committees established under section 135. Under the bill if the USTR determines to initiate this determination is to be published in the Federal Register and treated as if an affirmative determination on a petition had been made on the same date. This provision is intended to bring into play all the provisions applicable to petition based cases.

It is anticipated that USTR initiated cases would be the result of careful study, usually accomplished by national trade estimates, as well as careful coordination with statutory advisory committees. This process should, overall, result in a more coherent, aggressive, trade policy.

The bill would amend section 302 to require that a summary of the petition on the basis of which an investigation is instituted, rather than the petition itself, be published in the Federal Register. Copies of the documents would be provided at cost. The publication of entire petitions in the Federal Register has become an increasingly costly undertaking. The committee believes that publication of a summary together with the availability of the documents at reproduction cost will save money and at the same time provide the public with adequate notice and information with respect to cases which are instituted.

Section 303 of the Trade Act currently provides that on the date an affirmative determination is made to institute an investigation under section 301 the USTR must request consultations with the foreign country concerned regarding the issues raised in the petition. The administration has testified that the requirement of simultaneous initiation and requests for consultations has caused problems in several cases in which the petitions on which investigations are initiated did not provide an adequate basis for proceeding internationally. The bill would amend section 303 to provide USTR with the authority to delay for up to 90 days any request for consultations for the purpose of verifying or improving the petition to insure an adequate basis for consultation. The bill would also require the USTR to publish notice of the delay in the Federal Register and report to Congress on the reasons for such delay in the report currently required under section 306. It is the belief of the Committee that this authority should be used only in the unusual circumstances described and that the USTR should continue to make every effort to conclude section 301 actions within the prescribed normal time limits.

The bill reported by the Committee would also amend section 305 by adding a new subsection with respect to the treatment of confidential business information. The administration has testified that many U.S. firms or groups are reluctant to petition for investigations under section 301 because of their concern that any confidential business information which they might provide during the course of the proceeding might be subject to disclosure or that they will be subject to retaliatory actions in the offending country. The bill provides a specific exception from the Freedom of Information Act for business confidential information requested and received by the USTR in aid of any investigation under Chapter 1 of Title III of the Trade Act and provides that such information shall not be made available if submitted under the circumstances set forth therein. The bill provides the USTR with authority to prescribe regulations concerning provision of nonconfidential summaries of such information in order to give USTR the necessary flexibility in dealing with foreign countries or instrumentalities which provide such information but cannot be compelled to provide summaries. The bill also authorizes the USTR to use the information or make it available to an employee of the Federal Government for use in a section 301 investigation but requires that it be made available to any other person only in a form in which it cannot be associated with the source of the information. The committee believes that by protecting confidential information and its source these provisions will encourage and facilitate the filing of legitimate petitions under section 301, as well as encouraging and supporting self-initiated investigations.

Section 305 of the bill would amend Chapter 1 of title I of the Trade Act by adding a new section 104A providing specific negotiating objectives with respect to international trade in services and investment and high technology products. Under the provisions of the bill principal U.S. negotiating objectives with respect to trade in services would be the reduction or elimination of barriers to or distortions of international trade in services and the development of internationally agreed rules, including dispute settlement procedures, to reduce or eliminate such barriers. The terms "services" and "services associated with international trade" have not been defined. The committee was concerned that any definition would be limiting. The intent of the committee is that "services" and, for purposes of section 301 "services associated with international trade" be defined as broadly as possible.

Similarly the bill sets forth as negotiating objectives with respect to foreign direct investment the reduction or elimination of artificial or trade distorting barriers and the development of rules, including dispute settlement procedures, to ensure the free flow of foreign direct investment and the reduction or elimination of the trade distortive effects of certain investment related measures.

The bill also provides that principal U.S. negotiating objectives with respect to high technology products shall be to obtain and preserve the maximum openness of trade and investment in high technology products and related services; to obtain the elimination or reduction of or compensation for the significantly distorting effects of foreign government actions which affect trade in high technology products identified in the studies which would be required under section 181; to obtain commitments that the official policy of foreign governments or instrumentalities will not discourage government or private procurement of foreign high technology products; to obtain the reduction or elimination of all tariffs and barriers on U.S. exports of high technology products particularly key commodity products (a term the committee uses to identify standardized products sold in substantial quantities throughout the world such as the 64,000 random access memory electronic silicon chip); to obtain commitments to foster national treatment; to obtain commitments to foster pursuit of joint scientific cooperation and to ensure that access to the results of cooperative efforts should not be impaired; and to provide minimum safeguards for the acquisition and enforcement of industrial property rights and the property value of proprietary data.

Section 306 of the bill contains additional provisions with respect to trade in services. *Subsection (a)* provides that the USTR, through the interagency Trade Policy Committee, shall develop and coordinate U.S. policies concerning trade in services and that each department or agency responsible for the regulation of a service industry shall advise and work with the USTR concerning matters that have come to the department's or agency's attention with respect to the treatment of U.S. service sector interests in foreign markets or allegations of unfair practices by foreign governments or companies in a service sector. The committee intends that the existing trade policy structure be utilized to develop and coordinate policies concerning trade in services but has specified that these efforts be carried out in conformance with existing provisions of law in order to ensure that no authority granted under this section be construed as altering the existing authority of any agency or department with respect to any specific service sector.

Subsection (b) would establish in the Department of Commerce a service industry development program. *Subsection (c)* provides that it is the policy of the Congress that the President shall, as he deems appropriate, consult with state governments on issues of trade policy affecting them. it also authorizes the President to establish one or more intergovernmental policy advisory committees under the structure and procedures established in Section 135 of the Trade Act. It is the committee's intention that these intergovernmental advisory committees be established and utilized only in the areas, like insurance or procurement, where the states have particular interests and not across the broad spectrum of trade issues.

Section 307 of the bill would amend section 102 of the Trade Act by defining the term "international trade" to include foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services. This change would provide the President with specific authority to negotiate with respect to barriers on such foreign direct investment.

Section 308 of the bill would provide the President with authority to enter into bilateral or multilateral agreements as may be necessary to achieve the objectives of this section and those set forth in the proposed section 104A(c) concerning high technology products. *Subsection (b)* requires the Department of Commerce to submit a report within one year analyzing factors affecting the competitiveness of U.S. high technology industries. These factors would include those not dealt with under the report required by Section 3 of the bill. *Subsection (c)* would provide the President with a five-year authority to eliminate the duties on specified items within seven item numbers of the Tariff Schedules of the United States in order to carry out any agreement concluded as a result of the negotiating objectives under the proposed section 104A.

III. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970, Section 308 of the Congressional Budget Act of

1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the statement is made with respect to the cost and budgetary impact of the bill. The bill would authorize no new budgetary authority. The Committee estimates as follows with respect to the annual losses (gains) resulting from the enactment of H.R. 4566, as amended:

(1) Section 102 (Dicofol)	$244,000
(2) Section 103 (Copperscale)	$6,400
(3) Section 104 (Potatoes) (gain)	$320,000
(4) Section 105 (Texturing Machines)	$1,000,000
(5) Section 106 (Toys and Novelties)	$1-$2,000,000
(6) Section 107 (Red Peppers)	$20,000
(7) Section 108 (Sugar Act)	(1)
(8) Section 109 (Coffee Act)	(1)
(9) Section 110 (Casein button blanks)	$8,400
(10) Section 111 (Freight containers)	(2)
(11) Section 112 (Color couplers)	$100,000
(12) Section 113 (Carrots)	$190,000
(13) Section 114 (Hatter's fur)	(2)
(14) Section 115 (Watches from insular possessions)	(1)
(15) Section 116 (Caffeine)	(1)
(16) Section 117 (Sulfapyridine)	(1)
(17) Section 118 (Sulfathiazole)	(1)
(18) Section 119 (Fish netting)	$1,000,000
(19) Section 131 (Nairobi Protocol)	$6-$7,000,000
(20) Section 201 (Cultural Property)	(1)
(21) Section 301 (Reciprocal Trade and Investment Act)	(1)

[1] Not available.
[2] Minimal loss.

IV. Regulatory Impact of the Bill

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the committee states that the provisions of the committee bill will not regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no additional paperwork. The provisions of the bill generally do not change the procedures by which the products covered enter the United States, changing only the duties applicable.

Vote of the Committee

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the vote by the committee on the motion to report the bill. H.R. 4566, as amended, was ordered favorably reported without objection.

V. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1982)

GENERAL HEADNOTES AND RULES OF INTERPRETATION

1. *Tariff Treatment of Imported Articles.*—All articles imported into the customs territory of the United States from outside thereof are subject to duty or exempt therefrom as prescribed in general headnote 3.

2. *Customs Territory of the United States.*—The term "customs territory of the United States", as used in the schedules, includes only the States, the District of Columbia, and Puerto Rico.

3. *Rates of Duty.*—The rates of duty in the "Rates of Duty" columns numbered 1 and 2 and the column designated LDDC of the schedules apply to articles imported into the customs territory of the United States as hereinafter provided in this headnote:

(a) *Products of Insular Possessions.*

(i) Except as provided in headnote 6 of schedule 7, part 2, subpart E, and except as provided in headnote 3 of schedule 7, part 7, subpart A, articles imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth of product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 50 percent of their total value [(or more than 70 percent of their total value with respect to watches and watch movements)], coming to the customs territory of the United States directly from any such possession, and all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty.

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SCHEDULE 1.—ANIMAL AND VEGETABLE PRODUCTS

Item	Articles	Rates of duty		
		1	LDDC	2
	PART 8.—VEGETABLES			
	Potatoes, white or Irish:			
	Seed, certified by a responsible officer or agency of a foreign government in ac-			

Item	Articles	Rates of duty		
		1	LDDC	2
	cordance with official rules and regulations to have been grown and approved especially for use as seed, in containers marked with the foreign government's official certified seed potato tags, and [imported for use as seeds] *imported for use as seed*:			
137.20	For not over 114,000,000 pounds entered during the 12-month period beginning September 15 in any year.	36.5¢ per 100 lbs.	35¢ per 100 lbs.	75¢ per 100 lbs.
137.21	Other	60¢ per 100 lbs.	35¢ per 100 lbs.	75¢ per 100 lbs.
	Other than such certified seed:			
137.25	For not over 45,000,000 pounds and such additional quantity as may be allowed pursuant to headnote 2 of this part, entered during the 12-month period beginning September 15 in any year.	36.5¢ per 100 lbs.	35¢ per 100 lbs.	75¢ per 100 lbs.
137.26	If products of Cuba and entered during the period from December 1 in any year to the last day of the following February, both dates inclusive.	30¢ per 100 lbs. (s).		
137.28	Other	60¢ per 100 lbs.	35¢ per 100 lbs.	75¢ per 100 lbs.

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SCHEDULE 3.—TEXTILE FIBERS AND TEXTILE PRODUCTS

Item	Articles	Rates of duty		
		1	LDDC	2
	Part 4.—Fabrics of Special Construction or For Special Purposes; Articles of Wadding or Felt; Fish Nets; Machine Clothing			
	Fish netting and fishing nets (including sections thereof), of textile materials (con.):			
355.45	Other	[21¢ per lb. + 30.6% ad val.]. *17% ad val*		82% ad val.
	Of man-made fibers:			
	Salmon gill netting, of nylon (669)			
	Other (669)			
	Other			
	Woven or knit fabrics, in the piece or in units, coated, filled, or otherwise prepared for use as artists' canvas:			

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SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS

Item	Articles	Rates of Duty		
		1	LDDC	2
	PART 1.—BENZENOID CHEMICALS AND PRODUCTS			
	Products obtained, derived, or manufactured in whole or in part from any product provided for in subpart A or B of this part (con.):			
	Pesticides (con.):			
	Not artificially mixed (con.):			
	Insecticides:			
408.24	N'-(4-Chloro-o-tolyl)-N,N-dimethylformamidine; *1,1-Bis(4-chlorophenyl)-2,2,2-trichloroethanol (Dicofol)*			

Item	Articles	Rates of Duty		
		1	LDDC	2
	1,1-Dichloro-2,2-bis(p-ethlyphenyl)ethane; O,O-Diethyl-S-[(6-chloro-2-oxo-benzoxazolin-3-yl)methyl]phosphorodithioate (Phosalone); 2,2-Dimethyl-1,-3-benzodioxol-4-yl methylcarbamate (Bendiocarb); and O,O-Dimethyl-O-(4-nitro-m-tolyl)phosphorothioate (Fenitrothion).	1.2% ad val.	6.9% adrol.	7¢ per lb. + 41% ad val.

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SCHEDULE 6.—METALS AND METAL PRODUCTS

Item	Articles	Rates of duty		
		1	LDDC	2
	PART 4.—MACHINERY AND MECHANICAL EQUIPMENT			
	Subpart E.—Textile Machines; Laundry and Dry-Cleaning Machines; Sewing Machines			
670.00	Machines suitable for extruding or drawing man-made textile filaments.	6.1% ad val	4.7% ad val	40% ad val.
	Machines used to prepare natural or man-made fibers, or combinations thereof, for spinning, for use as stuffing, or for the manufacture of nonwoven felts or wadding; spinning machines, twisting machines, doubling machines, and other textile machines for producing yarns.			
670.02	Specially designed for vegetable fibers (except cotton).	3.7% ad val	3.1% ad val	40% ad val.
670.03	*Specially designed for stretch or heat-set texturing of continuous man-made fibers.*	*Free*	*Free*	*40% ad val.*
670.04	Specially designed for wool	6.1% ad val	4.7% ad val	40% ad val.

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SCHEDULE 7.—SPECIFIED PRODUCTS; MISCELLANEOUS AND NONENUMERATED PRODUCTS

Item	Articles	Rates of duty		
		1	LDDC	2
	PART 2.—OPTICAL GOODS; SCIENTIFIC AND PROFESSIONAL INSTRUMENTS; WATCHES, CLOCKS, AND TIMING DEVICES; PHOTOGRAPHIC GOODS; MOTION PICTURES; RECORDINGS AND RECORDING MEDIA			

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6. *Products of Insular Possessions.*—(a) Except as provided in paragraph [(b)] *paragraphs (b) through (h)* of this headnote, any article provided for in this subpart which is the product of [an insular possession of the United States outside the customs territory of the United States] *the Virgin Islands, Guam, and American Samoa (the "insular possessions")* and which contains any foreign component shall be subject to duty—

(i) at the rates set forth in column numbered 1, if the countries of origin of more than 50 percent in value of the foreign components are countries to products of which column numbered 1 rates apply, and

(ii) at the rates set forth in column numbered 2, if the countries of origin of 50 percent or more in value of the foreign components are countries to products of which column numbered 2 rates apply.

PART 2.—OPTICAL GOODS; SCIENTIFIC AND PROFESSIONAL INSTRUMENTS; WATCHES, CLOCKS, AND TIMING DEVICES; PHOTOGRAPHIC GOODS; MOTION PICTURES; RECORDINGS AND RECORDING MEDIA

[(b) If the requirements for free entry set forth in general headnote 3(a) are complied with, watches (provided for in item 715.05) and watch movements (provided for in items 716.04 through 719.—) which are the product of the Virgin Islands, Guam, or American Samoa and which contain any foreign component may be admitted free of duty, but the total quantity of such articles entered free of duty during each calendar year shall not exceed a number equal to ⅑ of the apparent United States consumption of watch movements during the preceding calendar year (as determined by the International Trade Commission), of which total quantity—

[(i) not to exceed 87.5 percent shall be the product of the Virgin Islands,

[(ii) not to exceed 8.33 percent shall be the product of Guam, and

[(iii) not to exceed 4.17 percent shall be the product of American Samoa.

[(c) On or before April 1 of each calendar year (beginning with 1967), the International Trade Commission shall determine the apparent United States consumption of watch movements during the preceding calendar year, shall report such determination to the Secretary of the Treasury, the Secretary of the Interior, and Secretary of Commerce, and shall publish such determination in the Federal Register, together with the number of watches and watch movements which are the product of the Virgin Islands, Guam, and American Samoa which may be entered free of duty under paragraph (b) during the calendar year.

[(d) The Secretary of the Interior and the Secretary of Commerce, acting jointly, shall allocate on a fair and equitable basis among producers of watches and watch movements located in the Virgin Islands, Guam, and American Samoa the quotas for each calendar year provided by paragraph (b) for articles which are the product of the Virgin Islands, Guam, and American Samoa, respectively. Allocations made by the Secretaries shall be final. The Secretaries are authorized to issue such regulations as they determine necessary to carry out their duties under this paragraph.]

(b) Watches and watch movements produced or manufactured in a United States insular possession which contain any foreign component may be admitted free of duty without regard to the value of the foreign materials such watches conform with the provisions of this headnote, but the total quantity of such articles entered free of duty shall not exceed the amounts established by or pursuant to paragraph (c) of this headnote

(c) In calendar year 1983 the total quantity of such articles which may be entered free of duty shall not exceed 7,000,000 units. In subsequent calendar years, the Secretaries of Commerce and the Interior (hereinafter in this headnote referred to as the "Secretaries"), acting jointly, shall establish a limit on the quantity which may be entered free of duty during the calendar year, and shall consider whether such limit is in the best interest of the insular possessions and not inconsistent with domestic or international trade policy considerations. The quantity the Secretaries establish in each calendar year shall not—

- *(i) exceed 10,000,000 units, or ⅑ of apparent domestic consumption (as determined by the International Trade Commission pursuant to paragraph (d) of this headnote), whichever is greater;*
- *(ii) be decreased by more than 10 percent of the quantity established for the immediately preceding calendar year; and*
- *(iii) be increased to more than 7,000,000 units, or by more than 20 percent of the quantity established for the immediately preceding calendar year, whichever is greater.*

(d) On or before April 1 of each calendar year (beginning with the first year in which watch imports from the United States insular possessions exceed 9,000,000 units), the International Trade Commission shall determine the apparent United States consumption of watches and watch movements (including solid state timepieces) during the preceding calendar year, shall report such determination to the Secretaries, and shall publish such determination in the Federal Register.

(e) In calendar year 1983, not more than 5,200,000 units of the total quantity of such articles which may be entered free of duty shall be the product of the Virgin Islands, not more than 1,200,000 units shall be the product of Guam, and not more than 600,000 units shall be the product of American Samoa. For calendar years 1984 and 1985 and thereafter, the Secretaries may establish new territorial shares of the total amount which may be entered free of duty, taking into account the capacity of each territory to produce and ship its assigned amounts. A territory's share in any year shall not be reduced—

- *(i) by more than 200,000 units in calendar year 1983, 1984, or 1985, and*
- *(ii) by more than 500,000 units in calendar year 1986 or thereafter, except that no territorial share shall be established at less than 500,000 units.*

(f) The Secretaries, acting jointly, shall allocate the calendar year duty exemptions provided by paragraphs (b), (c), and (e) of this headnote on a fair and equitable basis among producers located in the insular possessions, and shall issue appropriate licenses therefor. Allocations made by the Secretaries shall be final. In making the allocations, the Secretaries shall consider the potential impact of territorial production on domestic production of like articles and shall establish allocation criteria, which may include minimum assembly requirements, that will reasonably maximize the net amount of direct economic benefits to the insular possessions.

(g) Temporary Production Incentive Certificates.—

- *(i) Effective January 1, 1983, the Secretaries, acting jointly, shall verify the wages paid by each producer to permanent residents of the insular possessions in the preceding calendar year and, by March 1 of each year through calendar year 1994, shall issue to each producer a certificate for a portion of the amount so verified, determined pursuant to subparagraph (ii) of this paragraph*

Item	Articles	Rates of duty		
		1	LDDC	2
	(ii) The value of each producer's certificate shall equal 90 percent of each producer's creditable wages on the assembly of the first 300,000 units produced annually, plus a graduated declining percentage to be annually established by the Secretaries of the producer's creditable wages on the assembly of additional units, up to a maximum of 750,000 units annually. The aggregate value of all certificates shall not exceed an annual certificate limit, the value of which bears the same ratio to $5,000,000 as the gross national product of the United States for the preceding calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for calendar year 1982. If such limit is exceeded, the value of each producer's certificate shall be reduced proportionately by an amount sufficient to account for the amount by which the aggregate base amount exceeds the annual certificate limit, except that each producer's certificate shall not be reduced below an amount equal to 90 percent of each producer's creditable wages on the assembly of up to the first 300,000 units produced annually, unless the aggregate of there reduced certificates exceeds the annual certificate limit, in which event each producer's certificate shall again be reduced proportionately to account for the excess. *(iii) Such certificates entitle the certificate holder to secure the refund of duties equal to the face value of the certificate on watches, watch movements (including solid state timepieces) and, with the exception of discrete cases and bracelets, parts therefore imported into the customs territory of the United States by the certificate holder. Such refunds shall be made under regulations issued by the Treasury Department. Not more than 5 percent of these refunds may be retained as a reimbursement to the Customs Service for the administrative costs of makng the refunds.* *(iv) Such certificates, or portions thereof, are negotiable.* *(v) Such certificates shall expire 1 year from the date of issuance and may be applied against duties on imports of watches and watch movements the entry of which were made within 2 years prior to the date of issuance of the certificate.* *(vi) For purposes of calculating the value of each producer's production incentive certificates to be issued during calendar year 1983 only, the greater of either (A) a producer's creditable wages for calendar year 1982, or (B) an amount equal to 60 percent of a producer's creditable wages for calendar year 1981 shall be considered the creditable wages for calendar year 1982 for purposes of subparagraph (ii) of this paragraph.* *(h) The Secretaries are authorized to issue such regulations, not inconsistent with other provisions herein, as they determine necessary to carry out their respective duties under this headnote. Such regulations shall include minimum assembly requirements. Any duty-free entry determined not to have been made in accordance with applicable regulations shall be subject to the applicable civil remedies and criminal sanctions, and, in addition, the Secretaries may cancel or restrict the license or certificate of any manufacturer found in willful violation of the regulations.*			

* * * * * * *

Item	Articles	Rates of duty		
		1	LDDC	2

PART 7.—BUTTONS, BUCKLES, PINS, AND OTHER FASTENING DEVICES; ARTIFICIAL AND PRESERVED FLOWERS AND FOLIAGE; MILLINERY ORNAMENTS; TRIMMINGS; AND FEATHER PRODUCTS

Subpart A.—Buttons, Buckles, Pins, Hooks and Eyes, and Slide Fasteners

Subpart A headnotes:

1. This subpart does not cover—
   - (i) jewelry and other objects of personal adornment provided for in part 6A of schedule 7; or
   - (ii) harness and saddlery or riding-bridle hardware (see part 3D of schedule 6).
2. For the purposes of this subpart—
   - (a) the term "line" in the rates of duty columns (items 745.20 and 745.32) means the line button measure of one-fortieth of one inch, and
   - (b) the term "button blanks" in the superior heading to items 745.41 and 745.42 [(item 745.40)] is limited to raw or crude blanks suitable for manufacture into buttons.
3. Buttons (whether finished or not finished) provided for in item 745.32 which are the product of an insular possession of the United States outside the customs territory of the United States and which are manufactured or produced from button blanks or unfinished buttons which were the product of any foreign country shall be subject to duty under item 745.32 at the rate which applies to products of such foreign country.

* * * * * * *

[745.40	Button blanks and molds, and parts of buttons	22.1% ad val.	11.4% ad val	45% ad val.]
	Button blanks and molds, and parts of buttons:			
745.41	*Button blanks, of casein*	*Free*		*45% ad val.*
745.42	*Other*	*24.2% ad val.*	*11.4% ad val.*	*45% ad val.*

* * * * * * *

APPENDIX TO THE TARIFF SCHEDULES

Item	Articles	Rates of duty		Effective period
		1	2	

* * * * * * *

PART 1.—TEMPORARY LEGISLATION

Subpart B.—Temporary Provisions Amending the Tariff Schedules

Subpart B headnotes:

1. Any article described in the provisions of this subpart, if entered during the period specified in the last column, is subject to duty at the rate set forth herein in lieu of the rate provided therefor in schedules 1 to 8, inclusive.

[2. Articles exempted under item 915.25 from the payment of duty shall be exempt also from the payment of any internal revenue tax imposed upon or by reason of importation.]

2. For purposes of item 903.25—
   - *(a) The term "culled carrots" refers to those carrots which fail to meet the requirements of the United States Department of Agriculture for carrots of grades "U.S. No. 1" or "U.S. No. 2" (see 7 C.F.R. sections 2851.4141 and 2851.4142); and*

Item	Articles	Rates of duty		Effective period
		1	2	
	(b) The total quantity of carrots which may be entered under 903.25 during the period specified in that item shall not exceed 20,000 tons.			
	• • • •	•	•	•
	Subpart B statistical headnote: 1. For the purposes of statistical reporting of any item for which a unit of quantity (including X) appears in this subpart no additional reporting number (from schedules 1-7) is to be furnished.			
903.25[1]	*Culled carrots, fresh or chilled in immediate containers each holding more than 100 pounds (provided for in item 135.42, part 8A, schedule 1) if entered for consumption during the period from August 15 in any year to the 15th day of the following February, inclusive.*	*Free*	No change	On or before 6/30/85
903.45[1]	Water chestnuts or bamboo shoots, frozen (provided for in item 137.84 or 138.40, part 8A, schedule 1).	Free	Free	On or before 6/30/83
903.50[1]	Water chestnuts (provided for in item 141.70, part 8C, schedule 1).	Free	Free	On or before 6/30/83
903.55[1]	Bamboo shoots in airtight containers (provided for in item 141.78, part 8C, schedule 1).	Free	Free	On or before 6/30/83
903.60[1]	Mixtures of mashed or macerated hot red peppers and salt (provided for in item 141.77 or 141.88, part 8C, schedule 1).	Free	No change	On or before [6/30/81] *6/30/85*
	• • • •	•	•	•
903.80[1]	Other	Free	Free	On or before 6/30/84
903.85[1]	*Fur not on the skin, prepared for hatters' use, provided for in item 186.20.*	*Free*	*No change*	*On or before 12/31/85*
	• • • •	•	•	•
907.10[1]	Cyclic organic chemical products in any physical form having a benzenoid, quinoid, or modified benzenoid structure (however provided for in items 402.36 through 406.62, part 1B, schedule 4) to be used in the manufacture of photographic color couplers.	Free	No change	On or before [6/30/82] *9/30/85*
907.11	2-Methyl-4-chlorophenol (however provided for in items 402.36 through 406.63, part 1B, schedule 4).	Free	No change	On or before 6/30/81
907.12	Photographic color couplers (provided for in item 408.41, part 1C, schedule 4).	Free	No change	On or before [6/30/82] *9/30/85*
907.18[1]	*Caffeine (provided for in item 437.02, part 3B, schedule 4).*	*6% ad val*	*No change*	*On or before 12/31/83*
907.19[1]	*Sulfapyridine (provided for in item 411.28, part 1C, schedule 4).*	*Free*	*Free*	*On or before 12/31/85*
	• • • •	•	•	•
907.20[1]	Doxorubicin hydrochloride (provided for in item 411.76, part 1, or in item 437.32 or 438.02, part 3, schedule 4, depending on source).	Free	No change	On or before 6/30/82
907.22	*Sulfathiazole (provided for in item 411.80)*	*14.6% ad val*	*7¢ per lb + 80% ad val.*	*On or before 12/31/82*
911.05[1]	*Copper scale (provided for in item 603.70, part 1, schedule 6).*	*Free*	*No change*	*On or before 12/31/85*
	• • • •	•	•	•
911.80[1]	*Freight containers specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading, each having a gross mass rating of at least 40,000 pounds provided for in item 640.30, part 3A, schedule 6.*	*Free*	*No change*	*On or before 12/31/86*
	• • • •	•	•	•
912.14[1]	Warp knitting machines (provided for in item 640.20, part 4E, schedule 6).	Free	No change	On or before 6/30/83

Item	Articles	Rates of duty		Effective period
		1	2	
912.20	*Articles provided for in parts 5D and 5E of schedule 7 (except balloons, marbles, dice, and die-cast vehicles), valued not over five cents per unit; and jewelry provided for in part 6A of schedule 7 (except parts) valued not over 1.6 cents per piece.*	*Free*	*No change*	*On or before 12/31/86*

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[1] See appendix statistical headnote 1.

International Coffee Agreement Act of 1980

Public Law 96–599 [H.R. 3637], 94 Stat. 3491, approved December 24, 1980

AN ACT To carry out the obligations of the United States under the International Coffee Agreement 1976, signed at New York on February 27, 1976, and entered into force for the United States on October 1, 1976, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. This Act may be cited as the "International Coffee Agreement Act of 1980".

IMPORTATION OF COFFEE UNDER INTERNATIONAL COFFEE AGREEMENT 1976; PRESIDENTIAL POWERS AND DUTIES

SEC. 2. On and after the entry into force of the International Coffee Agreement 1976, and for such period prior to October 1, **[**1982**]** *1983* as the agreement remains in effect, the President is authorized, in order to carry out and enforce the provisions of that agreement—

(1) to regulate the entry of coffeee for consumption, or withdrawal of coffee from warehouse for consumption, or any other form of entry or withdrawal of coffee such as for transportation or exportation, including whenever quotas are in effect pursuant to the agreement, (A) the limitation of entry, or withdrawal from warehouse, of coffee imported from countries which are not members of the International Coffee Organization, and (B) the prohibition of entry of any shipment from any member of the International Coffee Organization of coffee which is not accompanied either by a valid certificate of origin, a valid certificate of reexport, a valid certificate of reshipment, or a valid certificate of transit, issued by a qualified agency in such form as required under the agreement;

(2) to require that every export or reexport of coffee from the United States shall be accompanied by a valid certificate of origin or a valid certificate of reexport, issued by a qualified agency of the United States designated by him, in such form as required under the agreement;

(3) to require the keeping of such records, statistics, and other information, and the rendering of such reports, relating to the importation, distribution, prices, and consumption of coffee as he may from time to time prescribe; and

(4) to take such other action, and issue and enforce such rules and regulations, as he may consider necessary or appropriate in order to implement the obligations of the United States under the agreement.

* * * * * * *

International Sugar Agreement, 1977, Implementation

Public Law 96-236 [H.R. 6029] 94 Stat. 336, approved April 22, 1980

AN ACT Providing for the implementation of the International Sugar Agreement, 1977, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Definitions.

For purposes of this Act—

(1) The term "Agreement" means the International Sugar Agreement, 1977, signed at New York City on December 9, 1977.

(2) The term "sugar" has the same meaning as is given to such term in paragraph (12) of Article 2 of the Agreement.

(3) The term "entry" means entry, or withdrawal from warehouse, for consumption in the customs territory of the United States.

Sec. 2. Implementation of Agreement.

On and after the entering into force of the Agreement with respect to the United States, and for such period before January 1, [1983] *1985* as the Agreement remains in force, the President may, in order to carry out and enforce the provisions of the Agreement—

(1) regulate the entry of sugar by appropriate means, including, but not limited to—

(A) the imposition of limitations on the entry of sugar which is the product of foreign countries, territories, or areas not members of the International Sugar Organization, and

(B) the prohibition of the entry of any shipment or quantity of sugar not accompanied by a valid certificate of contribution or such other documentation as may be required under the Agreement;

(2) require of appropriate persons the keeping of such records, statistics, and other information, and the submission of such reports, relating to the entry, distribution, prices, and consumption of sugar and alternative sweeteners as he may from time to time prescribe; and

(3) take such other action, and issue and enforce such rules or regulations, as he may consider necessary or appropriate in order to implement the rights and obligations of the United States under the Agreement.

Public Law 93–618, 93rd Congress, H.R. 10710, January 3, 1975

AN ACT To promote the development of an open, nondiscriminatory, and fair world economic system, to stimulate fair and free competition between the United States and foreign nations, to foster the economic growth of, and full employment in, the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Trade Act of 1974".

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THE TRADE ACT OF 1974

TITLE I—NEGOTIATING AND OTHER AUTHORITY

CHAPTER 1—RATES OF DUTY AND OTHER TRADE BARRIERS

SEC. 102. NONTARIFF BARRIERS TO AND OTHER DISTORTIONS OF TRADE.

* * * * * * *

(g) For purposes of this section—

(1) the term "barrier" includes the American selling price basis of customs evaluation as defined in section 402 or 402a of the Tariff Act of 1930, as appropriate;

(2) the term "distortion" includes a subsidy; and

[(3) the term "international trade" includes trade in both goods and services.**]**

(3) the term "international trade" includes—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

SEC. 104. SECTOR NEGOTIATING OBJECTIVE.

(a) A principal United States negotiating objective under sections 101 and 102 shall be to obtain, to the maximum extent feasible, with respect to appropriate product sectors of manufacturing, and with respect to the agricultural sector, competitive opportunities for United States exports to the developed countries of the world equivalent to the competitive opportunities afforded in United States markets to the importation of like or similar products, taking into account all barriers (including tariffs) to and other distortions of international trade affecting that sector.

(b) As a means of achieving the negotiating objective set forth in subsection (a), to the extent consistent with the objective of maximizing overall economic benefit to the United States (through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, through the development of fair and equitable market opportunities, and through open and nondiscriminatory world trade), negotiations shall, to the extent feasible be conducted on the basis of appropriate product sectors of manufacturing.

(c) For the purposes of this section and section 135, the Special Representative for Trade Negotiations together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 135 and after consultation with interested private *or non-Federal governmental* organizations, identify appropriate product sectors of manufacturing.

(d) If the President determines that competitive opportunities in one or more product sectors will be significantly affected by a trade agreement concluded under section 101 or 102, he shall submit to the Congress with each such agreement an analysis of the extent to which the negotiating objective set forth in subsection (a) is achieved by such agreement in each product sector or product sectors.

SEC. 104A. NEGOTIATING OBJECTIVE S WITH RESPECT TO TRADE IN SERVICES, FOREIGN DIRECT INVESTMENT, AND HIGH TECHNOLOGY PRODUCTS.

(a) TRADE IN SERVICES.—Principal United States negotiating objectives under section 102 shall be—

(1) to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny na-

tional treatment and the rights of establishment and operation in such markets; and

(2) to develop internationally agreed rules, including dispute settlement procedures, which—

(A) are consistent with the commercial policies of the United States, and

(B) will reduce or eliminate such barriers or distortions and help insure open international trade in services.

(b) FOREIGN DIRECT INVESTMENT.—*Principal United States negotiating objectives under section 102 shall be—*

(1) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(2) to develop internationally agreed rules including dispute settlement procedures, which—

(A) will help ensure a free flow of foreign direct investment, and

(B) will reduce or eliminate the trade distortive effects of certain investment related measures.

(*c*) HIGH TECHNOLOGY PRODUCTS.—*Principal United States negotiating objectives shall be—*

(1) to obtain and preserve the maximum openness with respect to international trade and investment in high technology products and related services;

(2) to obtain the elimination or reduction of, or compensation for, the significantly distorting effects of, foreign government acts, policies, or practices identified in section 181, with particular consideration given to the nature and extent of foreign government intervention affecting United States exports of high technology products or investments in high technology industries, including—

(A) foreign industrial policies which distort international trade or investment;

(B) measures which deny national treatment or otherwise discriminate in favor of domestic high technology industries;

(C) measures which impair access to domestic markets for key commodity products; and

(D) measures which facilitate or encourage anticompetitive market practices or structures;

(3) to obtain commitments that official policy of foreign countries or instrumentalities will not discourage government or private procurement of foreign high technology products and related services;

(4) to obtain the reduction or elimination of all tariffs on, and other barriers to, United States exports of high technology products and related services;

(5) to obtain commitments to foster national treatment; and

(6) to obtain commitments to—

(A) foster the pursuit of joint scientific cooperation between companies, institutions or governmental entities of the

United States and those of the trading partners of the United States in areas of mutual interest through such measures as financial participation and technical and personnel exchanges, and

(B) insure that access by all participants to the results of any such cooperative efforts should not be impaired; and

(7) to provide effective minimum safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data."; and

(d) DEFINITION OF BARRIERS AND OTHER DISTORTIONS.—For purposes of subsection (a), the term "barriers to, or other distortions of, international trade in services" includes, but is not limited to—

(1) barriers to the right of establishment in foreign markets, and

(2) restrictions on the operations of enterprises in foreign markets, including—

(A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(B) restrictions on the use of data processing facilities within or outside of such country or instrumentality.

CHAPTER 2—OTHER AUTHORITY

SEC. 128. MODIFICATION AND CONTINUANCE OF TREATMENT WITH RESPECT TO DUTIES ON HIGH TECHNOLOGY PRODUCTS.

(a) In order to carry out any agreement concluded as a result of the negotiating objectives under section 104A(c), the President may proclaim, subject to the provisions of chapter 3—

(1) such modification, elimination, or continuance of any existing duty, duty-free, or excise treatment, or

(2) such additional duties,

as he deems appropriate.

(b) The President shall exercise his authority under subsection (a) only with respect to the following items listed in the Tariff Schedules of the United States (19 U.S.C. 1202):

(1) Accounting, computing, and other data processing machines provided for in item 676.15.

(2) Data processing machines provided for in item 676.30.

(3) Parts of automatic data processing machines (and units thereof) provided for in item 676.52.

(4) Transistors provided for in item 687.70.

(5) Monolithic integrated circuits provided for in item 687.74.

(6) Integrated circuits provided for in item 687.77.

(7) Electronic components provided for in item 687.81.

(c) Termination.—The President may exercise his authority under this section only during the 5-year period beginning on the date of the enactment of the Reciprocal Trade and Investment Act of 1982.

CHAPTER 3—HEARINGS AND ADVICE CONCERNING NEGOTIATIONS

* * * * * * *

SEC. 135. ADVICE FROM PRIVATE *OR PUBLIC* SECTOR.

(a) The President, in accordance with the provisions of this section, shall seek information and advice from representative elements of the private sector *and the non-Federal governmental sector* with respect to negotiating objectives and bargaining positions before entering into a trade agreement referred to in section 101 or 102.

(b)(1) The President shall establish an Advisory Committee for Trade Negotiations to provide overall policy advice on any trade agreement referred to in section 101 or 102. The Committee shall be composed of not more than 45 individuals, and shall include representatives of government, labor, industry, agriculture, small business, service industries, retailers, consumer interests, and the general public.

(2) The Committee shall meet at the call of the Special Representative for Trade Negotiations, who shall be the Chairman. The Committee shall terminate upon submission of its report required under subsection (e)(2). Members of the Committee shall be appointed by the President for a period of 2 years and may be reappointed for one or more additional periods.

(3) The Special Representative for Trade Negotiations shall make available to the Committee such staff, information, personnel, and administrative services and assistance as it may reasonably require to carry out its activities.

(c)(1) The President may, on his own initiative or at the request of organizations representing industry, labor, or agriculture, establish general policy advisory committees for industry, labor, and agriculture, respectively, to provide general policy advice on any trade agreement referred to in section 101 or 102. Such committees shall, insofar as practicable, be representative of all industry, labor, or agricultural interests (including small business interests), respectively, and shall be organized by the President acting through the Special Representative for Trade Negotiations and the Secretaries of Commerce, Labor, and Agriculture, as appropriate.

(2) The President shall, on his own initiative or at the request of organizations in a particular sector, establish such industry, labor, or agricultural sector advisory committees as he determines to be necessary for any trade negotiations referred to in section 101 or 102. Such committees shall, so far as practicable, be representative of all industry, labor, or agricultural interests including small business interests in the sector concerned. In organizing such committees the President, acting through the Special Representative for Trade Negotiations and the Secretary of Commerce, Labor, or Agriculture, as appropriate, (A) shall consult with interested private organizations, and (B) shall take into account such factors as patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade, the character of the nontariff barriers and other distortions affecting such competition,

the necessity for reasonable limits on the number of such product sector advisory committees, the necessity that each committee be reasonably limited in size, and that the product lines covered by each committee be reasonably related.

(*3*) *The President—*

(*A*) *may establish policy advisory committees representing non-Federal governmental interests to provide, where the President finds it necessary policy advice (i) policy advice on matters referred to in subsection (a); and (ii) to provide policy advice with respect to implementation of trade agreements, and*

(*B*) *shall include as members of committees established under paragraph (2) representatives of non-Federal governmental interests where he finds such inclusion appropriate after consultation by the Trade Representative with such representatives.*

(g) (1) (A) Trade secrets and commercial or financial information which is privileged or confidential, submitted in confidence by the private *or non-Federal government* sector to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to—

(i) officers and employees of the United States designated by the Special Representative for Trade Negotiations, and

(ii) members of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate who are accredited as official advisers under section 161 (a) or are designated by the chairman of either such committee under section 161(b)(2), and members of the staff of either such committee designated by the chairman under section 161(b)(2),

for use in connection with negotiation of a trade agreement referred to in section 101 or 102.

(B) Information, other than that described in paragraph (A), and advice submitted in confidence by the private *or non-Federal government* sector to officers or employees of the United States, to the Advisory Committee for Trade Negotiations or to any advisory committee established under subsection (c), in connection with trade negotiations, shall not be disclosed to any person other than—

(i) the individuals described in subparagraph (A), and

(ii) the appropriate advisory committees established under this section.

(2) Information submitted in confidence by officers or employees of the United States to the Advisory Committee for Trade Negotiations, or to any advisory committee established under subsection (c), shall not be disclosed other than in accordance with rules issued by the Special Representative for Trade Negotiations and the Secretary of Commerce, Labor or Agriculture, as appropriate, after consultation with the relevant advisory committees established under subsection (c). Such rules shall define the categories of information which require restricted or confidential handling by such committee considering the extent to which public disclosure of such information can reasonably be expected to prejudice United States negotiating objectives. Such rules shall, to the maximum extent feasible, permit meaningful

consultations by advisory committee members with persons affected by proposed trade agreements.

(h) The Special Representative for Trade Negotiations, and the Secretary of Commerce, Labor, or Agriculture, as appropriate, shall provide such staff, information, personnel, and administrative services and assistance to advisory committees established pursuant to subsection (c) as such committees may reasonably require to carry out their activities.

(i) It shall be the responsibility of the Special Representative for Trade Negotiations, in conjunction with the Secretary of Commerce, Labor, or Agriculture, as appropriate, to adopt procedures for consultation with and obtaining information and advice from the advisory committees established pursuant to subsection (c) on a continuing and timely basis, both during preparation for negotiations and actual negotiations. Such consultation shall include the provision of information to each advisory committee as to (1) significant issues and developments arising in preparation for or in the course of such negotiations, and (2) overall negotiating objectives and positions of the United States and other parties to the negotiations. The Special Representative for Trade Negotiations shall not be bound by the advice or recommendations of such advisory committees but the Special Representative for Trade Negotiations shall inform the advisory committees of failures to accept such advice or recommendations, and the President shall include in his statement to the Congress, required by section 163, a report by the Special Representative for Trade Negotiations on consultation with such committees, issues involved in such consultation, and the reasons for not accepting advice or recommendations.

(j) In addition to any advisory committee established pursuant to this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal and, if such information is submitted under the provisions of subsection (g), confidential basis by private *or non-Federal government* organizations or groups, representing *government*, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data, and other trade information, as well as policy recommendations, pertinent to the negotiation of any trade agreement referred to in section 101 or 102.

Advisory committees established by Department of Agriculture

(l) The provisions of title XVIII of the Food and Agriculture Act of 1977 shall not apply to an advisory committee established under subsection (c) of this section.

(m) Non-Federal Government Defined.—The term "non-Federal government" means—

(1) any State, territory or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

(2) any agency or instrumentality of any entity described in paragraph (1).

CHAPTER 4—OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

SEC. 141. OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

* * * * * * *

(d) The Special Representative for Trade Negotiations may, for the purpose of carrying out his functions under this section—

(6) accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)); **[**and**]**

(7) adopt an official seal, which shall be judicially noticed**[**.**]***; and*

(*8*) *provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which exepnditures relating thereto were made.*

* * * * * * *

CHAPTER 8—BARRIERS TO MARKET ACCESS

SEC. 181. ACTIONS CONCERNING BARRIERS TO MARKET ACCESS

(*a*) *NATIONAL TRADE ESTIMATES.—*

(*1*) *In general.—Not later than the date on which the initial report is required under subsection* (*b*)(*1*), *the United States Trade Representative, through the interagency trade organization established pursuant to section 242*(*a*) *of the Trade Expansion Act of 1962 , shall—*

(*A*) *identify and analyze acts, policies, or practices which constitute significant barriers to, or distortions of—*

(*i*) *United States exports of goods or services, and*

(*ii*) *foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services; and*

(*B*) *make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph* (*A*).

(*2*) *Certain factors taken into account in making analysis and estimate.—In making any analysis or estimate under paragraph* (*1*), *the Trade Representative shall take into account—*

(*A*) *the relative impact of the act, policy, or practice on United States commerce;*

(*B*) *the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;*

(*C*) *the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party; and*

(D) any advice given through appropriate committees established pursuant to section 135.

(3) Annual revisions and updates.—The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) Report to Congress.—

(1) In general.—On or before the date which is one year after the date of the enactment of the Reciprocal Trade and Investment Act of 1982, and each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) to the Committee on Finance of the Senate and to the Committee on Ways and Means of the House of Representatives.

(2) Reports to include information with respect to action being taken.—The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to—

(A) any action under section 301, or

(B) negotiations or consultations with foreign governments.

(3) Consultation with Congress on trade policy priorities.—The Trade Representative shall keep the committees described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities.

(c) Assistance of Other Agencies.—

(1) Furnishing of information.—The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section.

(2) Restrictions on release or use of information.—Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(3) Personnel and services.—The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

SEC. 301. DETERMINATIONS AND ACTION BY PRESIDENT.

[(a) Determinations Requiring Action.—If the President determines that action by the United States is appropriate—

[(1) to enforce the rights of the United States under any trade agreement; or

[(2) to respond to any act, policy, or practice of a foreign country or instrumentality that—

[(A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

[(B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice. Action under this section maybe taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.]

(a) Determinations Requiring Action.—

(1) In general.—If the President determines that action by the United States is appropriate—

(A) to enforce the rights of the United States under any trade agreement; or

(B) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice.

(2) Scope of action.—The President may exercise his authority under this section with respect to any goods or sector—

(A) on a nondiscriminatory basis or solely against the foreign country or instrumentality involved, and

(B) without regard to whether or not such goods or sector were involved in the act, policy, or practice identified under paragraph (1).

(b) Other Action.—Upon making a determination described in subsection (a), the President, in addition to taking action referred to in such subsection, may—

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved; [and]

(2) *notwithstanding any other provision of law*, impose duties or other import restrictions on the [products] *goods* of, and fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate[.]*; and*

(3) propose legislation where necessary and appropriate to carry out the objectives of subsection (a).

Any legislation proposed under paragraph (3) shall be treated as an implementing bill pursuant to the provisions of section 151, except that, for purposes of section 151(c)(1), no trade agreement shall be required and the day on which the implementing bill is submitted shall be treated as the day on which the trade agreement is sub-

mitted. The President shall notify Congress, and publish notice in the Federal Register, of his intention to propose legislation under paragraph (3) at least 90 days before the implementing bill is submitted.

(c) PRESIDENTIAL PROCEDURES.—

(1) ACTION ON OWN MOTION.—If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 302, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) ACTION REQUESTED BY PETITION.—Not later than 21 days after the date on which he receives the recommendation of the Special Representative under section 304 with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

[(d) SPECIAL PROVISIONS.—

[(1) DEFINITION OF COMMERCE.—For purposes of this section, the term "commerce" includes, but is not limited to, services associated with international trade, whether or not such services are related to specific products.]

(d) DEFINITIONS; SPECIAL RULE FOR VESSEL CONSTRUCTION SUBSIDIES.—For purposes of this section—

(1) DEFINITION OF COMMERCE.—The term "commerce" includes, but is not limited to—

(A) services associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) VESSEL CONSTRUCTION SUBSIDIES.—For purposes of this section an act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3) DEFINITION OF UNREASONABLE.—The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable—

(A) market opportunities;

(B) opportunities for the establishment of an enterprise; or

(C) provision of adequate protection of intellectual property rights.

(4) Definition of unjustifiable.—

(A) In general.—The term "unjustifiable" means any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Certain actions included.—The term "unjustifiable" includes, but is not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment, the right of establishment, or protection of intellectual property rights.

(5) Definition of discriminatory.—The term "discriminatory" includes where appropriate any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

[SEC. 302. PETITIONS OR PRESIDENTIAL ACTION.

[(a) Filing of Petition With Special Representatives.—Any interested person may file a petition with the Special Representative for Trade Negotiations (hereinafter in this chapter referred to as the 'Special Representative') requesting the President to take action under section 301 and setting forth the allegations in support of the request. The Special Representative shall review the allegations in the petition and, not later than 45 days after the date on which he received the petition, shall determine whether to initiate an investigation.

[(b) Determination Regarding Petitions.—

[(1) Negative determination.—If the Special Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of his reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

[(2) Affirmative determination.—If the Special Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Special Representative shall publish the text of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

[(A) within the 30-day period after the date of the determination (or on a date after such period if agreed to by the petitioner), if a public hearing within such period is requested in the petition; or

[(B) at such other time if a timely request therefor is made by the petitioner.]

SEC. 302. INITIATION OF INVESTIGATIONS BY UNITED STATES TRADE REPRESENTATIVE.

(a) Filing of Petition.—

(1) In general.—Any interested person may file a petition with the United States Trade Representative (hereinafter in this chapter referred to as the "Trade Representative") requesting the President to take action under section 301 and setting forth the allegations in support of the request.

(2) Review of allegations.—The Trade Representative shall review the allegations in the petition and, not later than 45 days after the date on which he received the petition, shall determine whether to initiate an investigation.

(b) Determinations Regarding Petitions.—

(1) Negative determination.—If the Trade Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) Affirmative determination.—If the Trade Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the 30-day period after the date of the determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefor is made by the petitioner.

(c) Determination to Initiate by Motion of Trade Reppresentative.—

(1) Determination to initiate.—If the Trade Representative determines with respect to any matter that an investigation should be initiated in order to advise the President concerning the exercise of the President's authority under section 301, the Trade Representative shall publish such determination in the Federal Register and such determination shall be treated as an affirmative determination under subsection (b)(2).

(2) Consultation before initiation.—The Trade Representative shall, before making any determination under paragraph (1), consult with appropriate committees established pursuant to section 135.

SEC. 303. CONSULTATION UPON INITIATION OF INVESTIGATION.

(*a*) *In General.*—On the date an affirmative determination is made under section 302(b) [with respect to a petition,] the Special Representative, on behalf of the United States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition *or the determination of the Trade Representative under section 302(c)(1)*. If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Special Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Special Representative shall seek information and advice from the petitioner (*if any*) and the appropriate [private sector] representatives provided for under section 135 in preparing

United States presentations for consultations and dispute settlement proceedings.

(*b*) *DELAY OF REQUEST FOR CONSULTATIONS FOR UP TO 90 DAYS—*

(*1*) *IN GENERAL.—Notwithstanding the provisions of subsection (a)—*

(*A*) *the United States Trade Representative may delay for up to 90 days any request for consultations under subsection (a) for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and*

(*B*) *if such consultations are delayed by reason of subparagraph (A), each time limitation under section 304 shall be extended for the period of such delay.*

(*2*) *NOTICE AND REPORT.—The Trade Representative shall—*

(*A*) *publish notice of any delay under paragraph (1) in the Federal Register, and*

(*B*) *report to Congress on the reasons for such delay in the report required by section 306.*

SEC. 304. RECOMMENDATIONS BY THE SPECIAL REPRESENTATIVE.

(a) RECOMMENDATIONS.—

(1) IN GENERAL.—On the basis of the investigation under section 302, and the consultations (and the proceedings, if applicable) under section 303, and subject to subsection (b), the Special Representative shall recommend to the President what action, if any, he should take under section 301 with respect to the [issues raised in the petition] *matters under investigation.* The Special Representative shall make that recommendation not later than—

(A) 7 months after the date of the initiation of the investigation under section 302(b)(2) if the petition alleges only an export subsidy covered by the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (relating to subsidies and countervailing measures and hereinafter referred to in this section as the "Subsidies Agreement");

(B) 8 months after the date of the investigation initiation if the petition alleges any matter covered by the Subsidies Agreement other than only an export subsidy;

(C) in the case of a petition involving a trade agreement approved under section 2(a) of the Trade Agreements Act of 1979 (other than the Subsidies Agreement), 30 days after the dispute settlement procedure is concluded; or

(D) 12 months after the date of the investigation initiation in any case not described in subparagraph (A), (B), or (C).

(2) SPECIAL RULE.—In the case of any petition—

(A) an investigation with respect to which is initiated on or after the date of the enactment of the Trade Agreements Act of 1979 (including any petition treated under section 903 of that Act as initiated on such date); and

(B) to which the 12-month time limitation set forth in subparagraph (D) of paragraph (1) would but for this paragraph apply;

if a trade agreement approved under section 2(a) of such Act of 1979 that relates to any allegation made in the petition applies between the United States and a foreign country or instrumentality before the 12-month period referred to in subparagraph (B) expires, the Special Representative shall make the recommendation required under paragraph (1) with respect to the petition not later than the close of the period specified in subparagraph (A), (B), or (C), as appropriate, of such paragraph, and for purposes of such subparagraph (A) or (B), the date of the application of such trade agreement between the United States and the foreign country or instrumentality concerned shall be treated as the date on which the investigation with respect to such petition was initiated; except that consultations and proceedings under section 303 need not be undertaken within the period specified in such subparagraph (A), (B), or (C), as the case may be, to the extent that the requirements under such section were complied with before such period begins.

(3) Report if settlement delayed.—In any case in which a dispute is not resolved before the close of the minimum dispute settlement period provided for in a trade agreement referred to in paragraph (1)(C) (other than the Subsidies Agreement), the Special Representative, within 15 days after the close of such period, shall submit a report to Congress setting forth the reasons why the dispute was not resolved within the minimum period, the status of the case at the close of the period, and the prospects for resolution. For purposes of this paragraph, the minimum dispute settlement period provided for under any such trade agreement is the total period of time that results if all stages of the formal dispute settlement procedures are carried out within the time limitations specified in the agreement, but computed without regard to any extension authorized under the agreement of any stage.

(b) Consultation Before Recommendation.—Before recommending that the President take action under section 301 with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 302, the Special Representative, unless he determines that expeditious action is required—

(1) shall provide opportunity for the presentation of views, including a public hearing if requested by any interested person;

(2) shall obtain advice from the appropriate [private sector] advisory representatives provided for under section 135; and

(3) may request the views of the International Trade Commission regarding the probable impact on the economy of the United States of the taking of action with respect to such product or service.

If the Special Representative does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after making the recommendations concerned to the President, comply with such paragraphs.

SEC. 305. REQUESTS FOR INFORMATION.

(a) In General.—Upon receipt of written request therefor from any person, the Special Representative shall make available to that person information (other than that to which confidentiality applies) concerning—

(1) the nature and extent of a specific trade policy or practice of a foreign government or instrumentality with respect to particular merchandise, to the extent that such information is available to the Special Representative or other Federal agencies;

(2) United States rights under any trade agreement and the remedies which may be available under that agreement and under the laws of the United States; and

(3) past and present domestic and international proceedings or actions with respect to the policy or practice concerned.

(b) If Information Not Available.—If information that is requested by an interested party under subsection (a) is not available to the Special Representative or other Federal agencies, the Special Representative shall, within 30 days after receipt of the request—

(1) request the information from the foreign government; or

(2) decline request the information and inform the person in writing of the reasons for the refusal.

(c) Certain Business Information Not Made Available.—

(1) In general.—Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5, United States Code), no information requested and received by the Trade Representative in aid of any investigation under this chapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) Use of information.—The Trade Representative may—

(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this chapter, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

ADDITIONAL VIEWS OF MR. HEINZ

I am pleased at the inclusion of the substance of S. 2094, the trade reciprocity bill, in H.R. 4566. I have supported such a bill since last February when I first introduced legislation of the subject, and I supported the Committee's action in reporting S. 2094, Senator Danforth's bill. This legislation incorporates a number of provisions from two bills that I introduced this session—S. 2071 and S. 2356. It provides the President with important leverage for U.S. efforts to restore free market principles to the international economy and secure market access for U.S. products.

If this legislation is implemented by the Executive in the manner envisioned by its authors, that is, if additional authority is combined with action, it will send an important signal to our trading partners and help insure fairness and equity in the international economy.

Section 119, which would reduce the current duty on fish nets from 30.6 percent plus 21 cents per pound to 17 percent, on the other hand, was included in the bill over my objections. I oppose it, as does the Administration, because it would endanger a U.S. industry and make an unnecessary unilateral concession which would primarily benefit Japan. This provision would upset the balance between the interests of the fishing industry and those of domestic fish net manufacturers that was achieved in the Multilateral Trade Negotiations. The final MTN settlement provides a 60 percent reduction in the duty on fish nets staged over several years to reach 17 percent on January 1, 1989. This agreement reflects concern for the problems of the domestic fishing industry, but also provides adequate time for fish net manufacturers to adjust to increased import competition before the full effects of such a large tariff reduction are felt. Reducing the duty in one stage immediately would seriously harm small domestic net producers and two companies that produce synthetic fibers used in net construction.

Furthermore, since there have been recent findings of dumping of fish nets, and since the United States is attempting to take a strong stand toward the many Japanese trade barriers, a unilateral tariff reduction would be highly inappropriate at this time and would weaken the U.S. negotiating position.

JOHN HEINZ.

ADDITIONAL VIEWS OF MR. BENTSEN

Although I support virtually all of this bill, and, indeed, introduced or cosponsored many of its provisions, I voted in committee against and continue to be opposed to section 119, which would cut in half the effective rate of duty on fish netting retroactive to last January. The bill is opposed by the Administration, which has quite properly pointed out that under current law, duties on these products will be reduced to the level provided for in the section under current law, but that this reduction will occur gradually over a period of five years, during which the U.S. industry will have a chance to adjust. Not only do Texas net makers oppose the provision as giving an unfair—and uncompensated—benefit to foreign net makers, but even Texas shrimpers, who buy such nets, believe the legislation will eventually result in higher net prices because the effect of the bill would be to drive domestic producers out of business and leave foreign interests free to charge whatever they want.

I recognize the serious plight of the U.S. fishing industry, including some Texas fishermen. But under the circumstances, I must oppose this section of the bill, and I hope the Senate will see fit to strike it when this legislation is considered.

LLOYD BENTSEN.

ADDITIONAL VIEWS OF MR. HEINZ

I voted to report S. 2094 as modified with both enthusiasm and some regret. Enthusiasm because of the important step this bill represents in the direction of a more vigorous trade policy. Regret because of the committee's failure to seize all of the opportunities the bill presented, despite months of work on it.

Congressional focus on the reciprocity concept began last year as a number of Senators on the Finance Committee, including myself, began to draw the public's attention to the kinds of economic changes occurring in the international marketplace that adversely affected our interests. From an American perspective those changes have come to mean increased subsidies abroad on imports entering our country and increased barriers to our exports, as other nations struggle to cope with global recession and unemployment through a resurgence of mercantilist protectionism.

In part our attention to this problem comes from heightened sensitivity. Our own recession, coupled with radical advances in communication and transportation in the past 25 years have made us more aware of an interest in commercial opportunities elsewhere in the world. For an increasing number of American producers in both manufacturing and agriculture "growth" means exports. Similarly, our producers in mature industries have become more aware of increased imports, as other nations, facing the same problems we have, choose to deny the free market and export their problems through dumping and subsidizing.

Our increased sensitivity is also a product of the trade negotiation cycle itself. Thanks to the Multilateral Trade Negotiations and previous rounds, we now have much lower tariff walls plus codes on dumping, subsidies, Government procurement, customs valuation and so on. Barriers that were under the table in the past and insignificant in comparison to high tariffs are now exposed for all to see.

Nor should we be blind to the significance of these barriers and unfair practices or to the fact that they are growing. Witness after witness in virtually every hearing the committee has had this year regardless of the subject has commented on the increasing difficulty of obtaining market access abroad, particularly in Japan, or on the increasing incidence of unfairly traded imports, particularly in steel, items fabricated out of steel and other alloys, and a variety of retail products. The June 10 preliminary determinations by the Commerce Department in the pending steel cases, for example, found subsidies covering 20 percent of the steel imported into the United States and 50 percent of the steel shipped from the European Community. Some of the subsidies were as high as 40 percent. There are numerous other cases pending that will almost certainly increase these percentages.

It was in this evolving global context and with the conviction that all nations would gain most through the preservation of free market principles, that Senator Danforth and I introduced separate reciprocity bills on February 10th (S. 2094) and February 4th (S. 2071) respectively.

These bills were intended to clarify present law with respect to the President's authority to seek improved market access and to retaliate if it is denied; to broaden the law to clearly cover services and investment issues; to broaden the right of action to include Congress; to create retaliatory authority that is flexible and centralized in the Executive Office of the President; and to increase the likelihood that authority would actually be used by clarfying it and increasing the reporting burden on the President, so that he would either have to act or explain why he was not acting. In all such circumstances the authority provided was discretionary.

In making these proposals we saw a means of restoring free market principles to the international economy by attacking subsidies and the barriers to equitable access that are proliferating as the global economy becomes more complex. The bills were premised not on protectionism but on competition—competition of price and quality based on equal access to markets. They were intended to open other's doors not shut ours, both bills recognized that this would not necessarily occur without giving the President significant negotiating leverage. And it was our view that ultimately the leverage would have to be used a time or two to convince our trading partners that we are serious in our determination that markets be open and fair.

One of our problems throughout the past several administrations has been a tendency to make impressive threats and then not follow through when our bluff is called. I fear we have reached the point where our negotiating positions are often not credible simply because our trading partners, based on their past experience with us, simply do not believe we will retaliate no matter how justified our grievances might be.

We have seen this situation recently in the steel cases, where it appeared a number of European governments were reluctant to enter into serious settlement negotiations because they believed, up to June 9 at any rate, that our government would step in and solve the problem for them. That did not happen, and, regardless of the outcome of those particular cases, the fact that we have a Commerce Department clearly committed to enforcement of the law will send a message abroad that will stand us in good stead in the future.

In part, I believe this bill has succeeded in creating a mechanism for the kind of more aggressive trade policy we need. Existing law is clarified and defined. There is no longer any doubt that services and investment are covered or that the statute is intended to deal with non-GATT access problems as well as with GATT and code violations. The bill provides a study/analysis mechanism for identifying trade barriers and estimating their impact. This information will be valuable either to help the Government initiate cases or to encourage aggrieved industries to file petitions.

I am particularly pleased that the bill contains a number of provisions from my own legislation—from both S. 2071 and S. 2356;

beyond the general approaches contained in both the Danforth and Heinz bills. First, the use of so-called "fast track" section 151 procedures is added to the list of Presidential retaliatory authorities. Under those procedures the President can propose legislation which would then be considered under a special process providing for strict time limits on committee and floor consideration, guaranteed votes and no amendments. Through such procedures Congress can maintain effective control over retaliatory actions without the risk of timely proposals being tied up in extended debate or ruined by the addition of other, often nongermane items.

Second, the bill makes clear that the President has the authority to direct independent regulatory agencies to implement his actions under this legislation. The committee believed, correctly in my judgment, that it was unwise to permit such agencies to act on their own initiative in sensitive matters of international trade policy, but that it is certainly appropriate for them to act if asked to do so by the President. Third, thanks to an amendment I offered in committee, the bill now makes clear what we intended from the beginning—that all investment issues are covered and eligible for study, negotiation, or, if necessary, retaliation.

Finally, the reported version of S. 2094 borrows from my high technology bill (S. 2356, introduced April 1 by Senator Hart and myself) and recognizes the growing importance of those industries to our economic future and assigns them special attention by our trade policy makers.

The bill as reported incorporates the three essential components of S. 2356: negotiating authority, tariff-cutting authority, and studies of barriers and government policies affecting high technology. In including these provisions the committee recognized both the importance of high technology industries to our economy and the special trade problems they have.

As an industry experiencing sharp growth and change, high investment in research and development, and a rapidly declining learning curve for each new product, high technology manufacturers are relatively more vulnerable to predatory foreign practices aimed at price undercutting to capture market share, with devastating consequences for their future ability to invest and develop new generations of products. At the same time our industry experiences severe restrictions on access to foreign markets. We are expected to buy others products without limit, but it is somehow unfair for us to seek similar opportunities in other countries.

The provisions of this bill, however, provide a means for attacking this problem through a study of existing access problems and the authority to negotiate their reduction or elimination or other arrangements to offset them. The latter provision is intended to provide flexibility in dealing with barriers so firmly embedded in a society that their elimination on reduction is, in practical terms, unattainable. In such cases agreements providing some compensatory arrangement offsetting the effects of the barrier are permitted.

Finally, the high technology provisions provide modest tariff-cutting authority on a limited range of computers and semiconductor items. The authority is restricted to seven items:

Schedule	*TSUS*
Accounting, Computing and Other Data Processing Machines	676.15
Data Processing Machines Provided for in 676.3030	676.30
Parts of automatic data processing machines and units thereof provided for in 676.5230	676.52
Transistors	687.40
Monolithic Integrated Circuits	687.74
Other Integrated Circuits	687.77
Other Electronic Components	687.81

The tariffs on all those items are under 5 percent at present, and the bill provides authority to reduce or eliminate them. No other items are affected, and the authority expires after 5 years.

I added this provision to the bill because I believe it is a necessary element in helping our high technology industries compete internationally. It is my expectation that the authority will be exercised pursuant to negotiations which produce equivalent concessions on the part of our trading partners. I also want to make it clear, however, that I remain opposed to broad tariff-cutting authority outside the context of a specific multilateral negotiating round. Congress has historically been reluctant to grant such broad authority; wisely so, in my judgment. The authority in this bill is sectorally based, narrowly circumscribed, and limited in duration. I intend to oppose any efforts to broaden it.

Despite these steps forward however, the bill misses some important opportunities. In truth, as Senator Long pointed out when the committee considered the bill, it is no longer a real reciprocity bill since the "substantially equivalent competitive opportunities" standard in Senator Danforth's original S. 2094 has been removed from the retaliatory portion of the bill, though it remains as an objective of the bill. That action, and the bill's greater reliance on national treatment-related concepts as in S. 2071, in my judgment, make good sense.

Elsewhere, however, the weakening compromises that have been made are apparent, beginning with the more limited retaliatory authority. Initially, both my bill and Senator Danforth's bill provided discretionary authority because we both believed the complexity and sensitivity of trade barrier problems demanded a flexible approach from the President. Mandatory "mirror image" reciprocity would serve no useful purpose and would likely have unintended adverse consequences for our own trade practices.

There is, however, considerable range within the universe of discretionary authority. Both our original bills opted for the clear implication that when a barrier is found, the Executive ought to do something about it. My original high technology bill as well contained a provision essentially requiring either periodic "exoneration" of nations with alleged barriers or Presidential action to deal with them.

The bill as reported, however, weakens the implication that action is expected by removing any effective link between the study of barriers and subsequent action by the President. I suspect this will mean the continuation of the present record of virtually no self-initiations by the government in section 301 cases and a reliance instead on the petition process.

That process, however, has been weakened as well. The authority for the Ways and Means and Finance Committees to qualify as petitioners has been removed, as has a provision requiring an interim report on retaliatory alternatives available in each case should the GATT-conciliation process not be successful. Both those provisions were in the original versions of S. 2071 and S. 2094. In addition, the bill now contains authority for the U.S. Trade Representative to delay requesting consultations in a section 301 case for up to 90 days. The committee agreed to my amendment to limit the use of that authority to verifying or determining the sufficiency of the petition for consultations, but I fear the opportunity to delay for political purposes may nevertheless be tempting, despite the committee's intent.

There were two areas where we were able to defeat the administration's efforts to further weaken the bill—one by circumscribing the scope of investment issues covered by the bill, and one by inserting a "national interest" exception, which historically has been used by several administrations in other contexts as an excuse for inaction. The bill already contains enough reason not to act without this additional omnibus excuse.

While I believe the bill is weaker than it should have been, and certainly weaker than it could have been, had the committee stood its ground, I do not agree with the suggestion that it sends the wrong signal abroad. The only important signal this bill sends anyone will be determined by the way it is implemented by the Executive. From the beginning most of the committee understood that the key issue was not what additional authority was needed—because existing authority is already broad—but rather how to structure legislation that would insure the authority would be used, unlike our practice in past years. I voted to report the bill because it does make a useful and necessary contribution to our trade laws, particularly with respect to services, investment, and high technology, and because it provides needed expansion and clarification of present law. Unfortunately, the bill weakens the link between that authority and the expected action, which makes the key issue—the use of that authority—an open question.

JOHN HEINZ.

ADDITIONAL VIEWS OF MR. LONG

With regard to Title III of the bill, I do not approve of the committee action for the following reasons:

When this session began, Chairman Dole defined reciprocity in an article in the New York Times as follows:

> Reciprocity means a dramatic change from the "most-favored-nation" principle. It means that other countries should provide us with trade and investment opportunities equal not simply to what they afford their other "most-favored" trading partners, but equal to what we offer them.

I agree with this concept of reciprocity, and I also believe that if we are to bring justice and fairness to the international trading system, we must now adopt such a policy.

The present trading system, established at the end of the Second World War, is based on economic theories, not today's realities. The theories are of comparative advantage and free trade; the realities today are protectionism in Europe, Japan, and less developed countries, and trade with state-controlled economies and the Organization of Petroleum Exporting Countries.

Under the present trading system, the United States comes up short. Since we are expected to be the leaders of the system, other countries assume that we will give up trade benefits for the sake of abstract principles. For example, in the Tokyo Round Subsidies Code, the United States limited its right to assess duties that countervail the impact of foreign government subsidies in return for the abstract promise, which obviously has not been fulfilled, that foreign governments would not subsidize their exports.

There is no way that mere negotiation can get us out of the current unfavorable trend in world trade. If we are to be effective, we must have something to withhold and then negotiate about. Currently, we allow ourselves to withhold nothing. Therefore, no country has any incentive to relinquish its protectionist policies toward us. For example, Japan, which benefits from its bilateral surplus with the United States, will not give this advantage away voluntarily. No lesser mind than that of Deity itself can keep up with all the subtleties and rules of Japanese import trade, which are so effective in excluding American products, but these obstacles to free trade could be removed in short order if Japan had an adequate incentive to do so. American ineptitude in assessing our trade situation assures Japanese success.

Likewise, the European Community simply regards current agreements as not applicable to their unfair export subsidies and protectionist policies. Since Europe benefits from these policies, it will not give them up merely because the United States says an international agreement requires it.

The only way America can hold its own in a world where each country talks free trade and no major nation really practices it is to do business on a quid pro quo basis, withholding the quid until we get the quo.

If America can wake up before its industrial capacity has been given away, this nation can hold its own. It can do that by simply insisting that those who sell to us buy from us. The logical starting place is Japan. That nation sells us nothing that could not be produced here. Yet it buys from us only as a last resort. Meanwhile, it denies its own consumers American products that they would like to buy at a reasonable price.

This so-called reciprocity bill, originally intended to deal with the lack of balance in the current situation, has been modified to make it worse than meaningless. In its infancy, the bill proposed effective action by this Government to achieve reciprocity, but now the bill as reported retains reciprocity only as a "purpose" of the bill, mere words with no real authority to back them up.

The accepted formula for reciprocity is that it means "substantially equivalent competitive opportunities." By deleting this meaningful phrase and instead substituting vague words, such as "fair" and "equitable," the bill invites an impression that something has been done to help American management and labor. In fact, the bill is mere window-dressing for additional negotiating authority that will give away more of America's substance than could have been given away without the bill. If this bill becomes law, then the Government of Japan, having once feared that America was on the verge of acting to defend its industrial strength, will heave a sigh of relief that both the Executive Branch and the Congress have thrown in the towel and settled for a mere gesture. Even worse, this bill serves as a vehicle for future concessions that we cannot afford.

If the Senate is serious about true reciprocity, then it will approve the following substitute provision, which represents the heart of what Chairman Dole defined as "reciprocity":

RECIPROCITY

(a) Whenever the President determines that any existing act, practice, or policy of any foreign country is unduly burdening and restricting the foreign trade of the United States, and that no United States act, policy, or practice imposes a similar burden or restriction on the foreign trade of that country, then the President may proclaim such new or additional duties or other import restrictions as are likely to burden or restrict the foreign trade of that country to at least the same extent that country burdens or restricts United States foreign trade.

(b) The President may, as necessary to carry out the purposes of this section—

(1) issue rules and regulations;

(2) delegate responsibilities under this section as he deems appropriate;

(3) conduct investigations and hearings as he deems appropriate; and

(4) proclaim increases in rates of duty on a discriminatory or a nondiscriminatory basis, and following any such increase may reduce duties, or remove or reduce any other import restriction imposed under this section, to levels equal to or higher than the level of such duties or restrictions before he took action under this section.

RUSSELL B. LONG.

ADDITIONAL VIEWS OF MR. BAUCUS

I continue to be concerned about the substance of S. 2094, which has been added to this bill, for the reasons I stated at the time S. 2094 was reported, which are as follows:

In committee, I voted against this legislation, reluctantly, for several reasons.

The 1980's have been referred to as "the dangerous decade." This is true for economic as well as military reasons.

The world economy is undergoing profound and fundamental change. New higher technology and service industries are growing; older industries are under challenge. Industrial, Communist and developing nation economies are in deep trouble. Trade tensions are rising accordingly.

Moreover, America's friends and allies are increasingly divided over a range of issues. Americans and Europeans are justifiably miffed by the slow pace of Japanese market-opening measures. Europeans, who themselves practice protectionism and subsidization (in steel and agriculture, for example), are angry at American interest rates, opposition to the trans-Siberian Pipeline, and our reluctance to intervene in international currency markets.

Once again, the Middle East has erupted. Latin America is unstable. We may face increasing strains with China. Meanwhile the Soviet orbit is characterized by similar disarray, and in some cases, potential bankruptcy.

Trade policy must take into consideration the changing world economy, tensions between America's friends (and adversaries), the problems of our own economy, and the degree to which foreign protectionism exacerbates those problems.

Obviously, different problems mitigate in different policy directions. We need to be more aggressive in defending our rights under international trade agreements. We need to strengthen our domestic economic infrastructure to make American products more competitive. And we need to do so while avoiding the protectionism that compounded the Great Depression in the 1930's. It is no easy task.

I would have opposed the original "reciprocity" bill, had it been voted on by the committee, because it would have heightened international tensions without the promise of significant trade benefits. I opposed the final bill, because it sent different signals to different people, and I do not believe that it will provide significant trade benefits, while it does create subtle dangers of misunderstanding.

ON JAPAN

I recently spent some time in Japan, and since my return, I have met with numerous members of the Diet. I am greatly concerned about the future of U.S.-Japanese relations, and want to avoid escalating tensions that would be mutually tragic.

We should remember that on most international issues, Japan has been a steadfast American ally. Yet, the Japanese are moving disastrously slow in opening their markets. Agricutural protection is outrageous, and more than a few Japanese officials have admitted this privately. In Europe and the United States, there is an increasing belief, overstated but not wholly inaccurate, that Japan is exporting unemployment.

The Japanese market-opening measures, while historic by Japanese standards, must continue. More concessions, major in scope, detailed in presentation, are needed.

When Ambassador Brock appeared before the Trade Subcommittee, I asked him how far Japan had come in opening its markets. He said Japan had moved about 15 percent of the distance. After the recent round of Japanese concessions, a little more distance has been covered.

This fall, agricultural negotiations will resume, and the GATT Ministerial will take place. The next few months are extremely important and extremely sensitive. It is vital that Japan move much further down the road of open markets.

DIFFERENT SIGNALS

Japanese-American relations are characterized by a failure to communicate. Japanese markets are more open than most Americans realize, and more closed than most Japanese understand.

This legislation sends two different signals. To Americans, the message is action. We are acting on trade. But to Japanese officials, we may be sending the opposite message, by passing a mild bill, at this time.

I fear that some Japanese officials, arguing within the Japanese Government, may use this legislation as evidence that major market-opening measures are not urgently needed.

Such a reading would be radically and dangerously wrong. Such a misunderstanding, if it weakens future Japanese initiatives, could ultimately lead to more protectionism on both sides of the Pacific.

Therefore, I am concerned about the timing of this legislation. I have no profound objection to its content. It would be well advised to pass it after, but not before, more far-reaching Japanese concessions that are needed to prevent future tensions.

TOWARD THE FUTURE

My second concern is that the bill deals with symptoms, rather than the disease. The roots of our trade problem are here at home. If we don't address these domestic problems, our lack of competitiveness, and hence our trade problems, will persist, no matter how open markets may be.

We need to address the overvaluation of the dollar, and the undervaluation of the yen. We need to address those problems that account for a lack of competitiveness. Again, noncompetitive products will not sell in open markets.

We need to devote more resources to research and development.

We need to increase our commitment to education. Ph. D.'s in the sciences are down from the 1970's. In chemistry, physics, computer sciences, astronomy, and engineering, they are down between 25–40 percent. As a percentage of population, Japan produces about twice as many engineers as we do. Many of those who do graduate from American schools are foreign students, who will return home to compete against Americans.

We need to move toward a computer literate population. When today's youth mature, either they will be computer literate or they will be in trouble.

We need to maintain our leadership in civilian space sciences. Recently, the Office of Technology Assessment suggested that we are abandoning that leadership role. If it is taken over by trade competitors in Europe or Japan, future competitiveness would be further eroded.

We need to improve our roads and ports, which are essential to a sound economic infrastructure. Today we are neglecting them.

We need to train and retrain workers to provide the skilled labor that is now in short supply. Today there are unfilled jobs. We need to match the workers with the work.

We need to have a population more literate in foreign languages. How many Japanese do we know that speak English? And how many Americans speak Japanese? The contrast is enlightening.

We need to find ways of encouraging American business to think in longer terms, rather than being preoccupied with short term profit margins.

We need to get interest rates down, to allow business to invest at more reasonable rates, to restore consumer purchasing power, and to bring the value of the dollar more into balance, to stimulate exports.

We are neglecting these problems for a reason. We are neglecting them because we need to finance a record $750 billion tax cut, and a $1½ trillion defense budget, over five years.

The greatest contribution we can make to our balance of trade would be to change the direction of economic policymaking, to address those questions that most profoundly affect competitiveness.

While we do this, we should pursue a tough negotiating posture. If this fall yields significant market opening measures, a bill such as the one reported by the Finance Committee would be timely and appropriate. If not, we will have no choice but to pursue stronger legislation.

MAX BAUCUS.

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